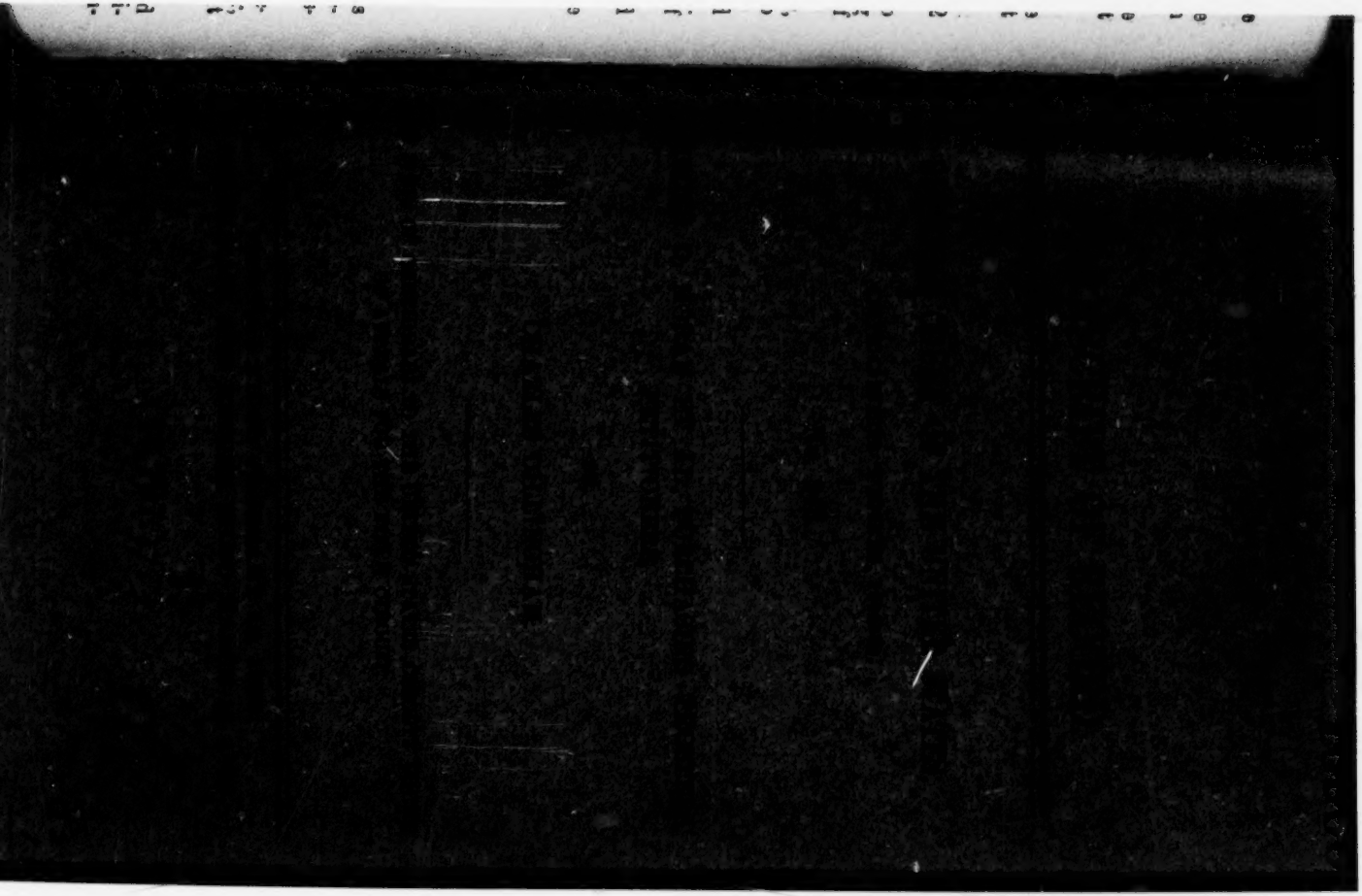

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(16,797.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 243.

AMEDEE D. MORAN ET AL., PURCHASING TRUSTEES, PETITIONERS,

vs.

CHARLES DILLINGHAM.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1896, and held in the court-room of said court, in the city of New Orleans, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, and the Honorable William T. Newman, United States district judge for the northern district of Georgia.

CHARLES DILLINGHAM, Receiver, Appellant,
vs.
AMEDEE D. MORAN ET AL., as Purchasing Trustees, Appellees.

Be it remembered that heretofore, to wit, on the 9th day of January, 1897, a transcript of the record of the above-styled cause from the circuit court of the United States for the northern district of Texas was filed in the office of the clerk of said United States circuit court of appeals in the words and figures following, to wit:

1 *Caption.*

Be it remembered that at a regular and stated term of the circuit court of the United States, in the fifth circuit in and for the northern district of Texas, begun and held at Waco, in said district, on the third Monday in November, A. D. 1896, the Honorable Charles Swayne, district judge of the northern district of Florida, presiding, in the following causes:

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL.
— Original Bill. No. 21. Equity.

FARMERS' LOAN AND TRUST COMPANY, as Trustee,
vs.
TEXAS CENTRAL RAILWAY COMPANY AT AL.
— Cross-bill. No. 33. Equity.

There was heard and determined the exceptions to the report of special master on the accounts of Charles Dillingham, receiver, and the following proceedings were had and done, to wit:

Agreement Made to Abbreviate the Record.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company *vs.* TEXAS CENTRAL RAILWAY COMPANY ET AL.	No. 21. Equity.
FARMERS' LOAN AND TRUST COMPANY *vs.* TEXAS CENTRAL RAILWAY COMPANY ET AL.	No. 33. Equity.

2 In the above numbered and entitled cause consolidated, the following agreement is made by the solicitors for appellant, Charles Dillingham, and for the appellees, Charles Moran and Henry K. McHarg and Cornelius B. Gould, purchasing trustees, in order to abbreviate the record, to wit:

1. That in the year 1885 bills were duly filed by complainants in the above numbered and entitled causes, consolidated, in the circuit court of the United States for the northern district of Texas at Waco, setting up indebtedness by first-mortgage bonds and otherwise on the part of the respective complainants, praying for the appointment of a receiver and for foreclosure and sale of the property of the defendant railway company to satisfy said indebtedness, which bills were in the usual form.

2. That on to wit: the 4th day of April A. D. 1885, Charles Dillingham and Benjamin G. Clark were appointed joint receivers of the defendant railway company, as prayed in said bills.

3. That said receivership was administered by Charles Dillingham as the active receiver of the railway until 1891, and a final decree of foreclosure having been entered in the cause in 1887, the property of the defendant railway company was ordered to be sold, and sale duly made in April, 1891.

4. That the railway, its franchises, rolling stock, sidings, switches and appurtenances were sold in 1891 under said final decree by Charles Dillingham and John G. Winter, as special master commissioners, and deed duly made to the purchasers, Charles Moran, Henry K. McHarg and Cornelius B. Gold, in the same year, and who are made parties to this suit by the decree of confirmation.

5. That Charles Dillingham has never been formally discharged as receiver of the defendant railway company up to this time, but as to the duties he has performed reference is made to the evidence and the master's report.

Dated this the 28th day of December, 1896.

GEO. CLARK,
D. C. BOLINGER,
Solicitors for Appellant, Charles Dillingham.
L. W. CAMPBELL,
Solicitors for Moran, Gould, and McHarg, Appellees.

3 Endorsed: Agreement to be made part of record on appeal of Charles Dillingham. Filed Dec. 28, 1896. J. H. Finks, clerk, by C. A. Richardson, deputy.

Order Appointing Receivers.

United States Circuit Court, Northern District of Texas, Sitting at Waco.

MORGAN'S LOUISIANA AND TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY.
} No. 21. Ch. D.

Before the Hon. Don A. Pardee, United States circuit judge, for the said circuit, sitting at chambers in the city of New Orleans, La.

This cause came on to be heard this day in chambers upon the application of the complainants for the appointment of a receiver, and was argued by counsel, Messrs. Farrar & Kruttschnitt for the complainants, and Messrs. Baker, Botts & Baker for the defendant, and the court being sufficiently advised upon the motion of the complainant for the appointment of a receiver, this day submitted to the court upon the bill exhibits and affidavits filed by the complainant.

It is ordered, adjudged and decreed by the court that Benjamin G. Clark, of New York, and Charles Dillingham, of New Orleans, La., upon their giving bond in the sum of one hundred thousand dollars, be appointed joint receivers herein, to take possession of the money and assets, real and personal, road-bed, road, iron, ties, lands, rights of way, rolling stock, leases, franchises and all other rights of property whatsoever of the said Texas Central Railway Company, wherever the same may be found, with power to manage, control and exercise all the franchises whatsoever of the said railway company, and with power to prosecute, defend and continue all suits brought by said company, or against the said company, whether heretofore or hereafter commenced, or whether in the name of said railway company or otherwise; to defend all suits brought against them as such joint receivers, or affecting their joint receivership,

4 and to bring such suits in the name of the said company as they may be advised by counsel to be necessary or proper in the discharge of the duties of their office, and for acquiring, securing and protecting the assets, franchises, property and rights of the said railway company.

And it is further ordered, adjudged and decreed that the said defendant, The Texas Central Railway Company, transfer and deliver over to the said joint receivers, on oath, under the direction of the special master, hereinafter appointed, all of the property, real and personal, wheresoever found, and all other equitable interests, and things in action, and other effects which belong to, or were held in trust for the said defendant railway company, or in which it had any beneficial interest, in the same condition that they were in at

the time of exhibiting the said bill of complaint in this case, except as far as necessarily changed in the proper management of the said railway, or in which it now has any such interest; and that the said defendants deliver over in like manner, all books, vouchers, or other effects relating thereto.

And it is further ordered, that the said joint receivers have full power and authority to inquire after, receive and take possession of all such property, equitable interests and things in action, and other effects, and for that purpose to examine the said defendant, its officers and such other persons as they may deem proper on oath before the said master, from time to time as they may deem necessary.

And it is further ordered, that the said Benjamin G. Clark and Charles Dillingham, joint receivers, are hereby directed and required, as such receivers to keep a full and accurate account of all their acts and doings as such receivers, and to report the same to this court from time to time, as they may be hereafter directed by order of this honorable court; and in the meantime and until another order of this court be rendered, to run, operate and manage the railways of the said defendant railway company, and to manage and control all of the said property and affairs of the said defendant railway company. And the said joint receivers are hereby empowered and directed to employ such counsel and attorneys as they may deem necessary, to manage in their behalf such suits and other affairs as have arisen, or may arise, and to advise the said receivers in relation to the performance of their duties therein.

5 And it is further ordered, adjudged and decreed, that the said receivers may use the moneys of the said defendant railway company for any and all of the purposes stated in the foregoing provisions.

And it is further ordered, adjudged and decreed, that John G. Winter, Esqre., attorney-at-law, of Waco, Texas, be appointed special master in chancery herein, and that he be clothed with all the powers of a master in chancery of this court, as to all matters herein referred to him, or that may hereafter be referred to him.

It is further ordered, adjudged and decreed, that any of the parties to this bill may, if they so desire, have leave to apply to the special master above named, to have the bond of the joint receivers hereinabove, fixed, increased or diminished according as they may be advised.

Thus done and signed in the city of New Orleans, La., at chambers this 4th day of April, A. D. 1885.

DON A. PARDEE, *Judge.*

Endorsed as follows: No. 21. Order appointing receiver. Filed April 6th, 1885. J. H. Finks, clerk.

Petition of E. H. Farrar & E. B. Kruttschnitt for Allowance and Order.

United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD and Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21. In Equity.

To the honorable the judges of said court:

Your petitioners Edgar H. Farrar and Ernest B. Kruttschnitt composing the law firm of Farrar & Kruttschnitt respectfully show unto your honors:

That they have been acting as counsel for the receivers in this cause from about the fourth day of April, 1885, to this time, and that no compensation has been allowed them. That their services have been continuous and valuable.

6 Wherefore they pray that your honors may authorize and direct the receivers to pay such sum to the said Farrar & Kruttschnitt as may to your honors seem meet and proper, on account of the sum that may hereafter be allowed them for their services as counsel for the receivers.

EDGAR H. FARRAR,
E. B. KRUTTSCHNITT.

Order.

Considering the foregoing petition and the previous orders entered in this cause authorizing the receivers to retain Messrs. Farrar & Kruttschnitt as their solicitors it is ordered that the receivers be directed to make and pay to Messrs. Farrar & Kruttschnitt, on account of their compensation as solicitors of the receivers an allowance of one hundred dollars per month to date from date of their employment by the receivers and to continue until further order of this court.

Dec. 4th, 1886.

DON A. PARDEE,
Circuit Judge.

Endorsed as follows: No. 21. In equity. Petition of E. H. Farrar & E. B. Kruttschnitt, for allowance and order. Filed Dec. 6th, 1886. J. H. Finks, clerk.

Petition of Charles Dillingham for Allowance and Order.

United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD and Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY. } No. 21. In Equity.

To the honorable the judges of said court:

Your petitioner, Charles Dillingham, one of the joint receivers in this cause, with due respect showeth:

That since the fourth day of April, 1885, he and his joint receiver, Benjamin Clarke, have been in possession, under the orders of this honorable court, of the Texas Central Railway Company.

7 That your petitioner has been the active receiver of said concern, and for the past seventeen months has lived in Texas, managing the affairs of said company in the performance of his said trust. That petitioner's duties have been arduous, and that no compensation has been paid him for his services.

Wherefore your petitioner prays your honors may make him an allowance for his services, to be paid out of the current revenues coming into the hands of the receivers, and which said allowance shall be credited upon any amount herein allowed to the receivers on the final hearing and disposition of this cause.

FARRAR & KRUTTSCHNITT, *Solicitors.*

Order.

On considering the foregoing petition it is ordered by the court that the receivers be authorized and directed to place Charles Dillingham upon the pay-roll of the receivers for the sum of one hundred and fifty dollars per month, as an allowance upon his compensation as receiver in this cause. This allowance to date from the possession of the receivers and to continue while Mr. Dillingham gives his personal attention to the business of the company, or until the further order of the court.

DON A. PARDEE,
Circuit Judge.

December 4th, 1886.

Endorsed as follows: No. 21. In Equity. Petition of Chas. Dillingham for allowance and order. Filed Dec. 6th, 1886. J. H. Finks, clerk. Farrar & Kruttschnitt, for Chas. Dillingham.

At a stated term of the circuit court of the United States for the northern district of Texas, held at the court-rooms in the city of Waco, on the eleventh day of April, 1887.

Present, the Honorable Don A. Pardee, circuit judge.

8 MORGAN'S LOUISIANA AND TEXAS RAILROAD and Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, THE Farmers' Loan and Trust Company, as Trustee, and The Metropolitan Trust Company of the City of New York, as Trustee. } Original Bill. In Equity. No. 21.

THE FARMERS' LOAN AND TRUST COMPANY, as Trustee,
vs.
THE TEXAS CENTRAL RAILWAY COMPANY, THE Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company. } Cross Bill No. 33.

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon due consideration thereof, it was ordered, adjudged and decreed as follows, namely:

I. *The court finds* from the pleadings, exhibits and evidence, that the cross-complainant herein, The Farmers' Loan and Trust Company is, and for more than twenty years last past has been, a corporation duly organized and existing under the laws of the State of New York, having its principal office for the transaction of business in the city of New York, in said State of New York; that the defendant, The Texas Central Railway Company, is a corporation duly organized and existing under the laws of the State of Texas, with power to construct and operate lines of railway in said State, having its principal office for the transaction of business at Ross, in said State of Texas; that the defendant, The Metropolitan Trust Company of the City of New York, is a corporation duly organized and existing under the laws of the State of New York, having its principal office for the transaction of business in the city of New York in said State of New York; and that the original complainant and cross-defendant, Morgan's Louisiana and Texas Railroad and Steamship Company, is a corporation duly organized and existing under the
9 laws of the State of Louisiana, having its principal office for the transaction of business in the city of New Orleans, in said State of Louisiana.

II. *The court further finds*, that on or about September 15th, 1879, the defendant, The Texas Central Railway Company, executed and delivered to the complainant, The Farmers' Loan and Trust Company, its certain first mortgage or deed of trust, dated that day, wherein and whereby the said railway company, in order to secure the payment of a series of one-thousand-dollar bonds to be issued at the rate of fifteen thousand dollars for each mile of road, all to bear said date, did grant and convey unto the cross-complainant, its successors and assigns, all and singular the main line of the said Texas Central Railway Company's railway, built and to be built, beginning at the Ross station, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton,

Erath and Comanche, to or near the centre of Eastland county, a distance of about one hundred and thirty miles, together with all side tracks, turn-outs, rolling stock, equipments and materials, all rights of way and tracks, depot and shop grounds, tenements, hereditaments, rights and franchises, including and meaning to include, all the property, real and personal, then acquired, or which thereafter might be acquired by the said company in the State of Texas, used for and pertaining to the operation of the said railway; which said conveyance of mortgage was made in trust, on certain terms and conditions, for the benefit of the owners and holders of the said bonds and of the interest coupons thereto annexed,

III. *The court further finds*, that in the said mortgage or deed of trust it was, among other things, provided, that in case the Texas Central Railway Company should fail to pay any of the interest on any of the said bonds, at any time when the same might become due and payable and such default should continue sixty days after demand, then and thereupon the principal of all the said bonds should be and become immediately due and payable.

IV. *The court further finds* that the said mortgage or deed of trust was and is the proper act and deed of the defendant, The Texas Central Railway Company, by it authorized, made and delivered in all respects in conformity to law, and that the same was duly recorded in the offices of the clerks of the several counties wherein said railroad and other property affected thereby was situated, on or about October 7th, 1879, so as to be and constitute a first lien upon the mortgaged premises and property therein mentioned and described; that the same was also registered, in all respects according to law, so as to affect the chattels and other personal property of the said railway company, in each and every one of said counties, the original on a certified copy thereof remaining in each case on deposit.

V. *The court further finds* that the bonds to secure which said mortgage or deed of trust was made were all dated September 15th, 1879, and were made for the sum of one thousand dollars each, payable to bearer November 1st, 1909, (and they are herein designated for convenience as the bonds of 1909,) with interest at seven per centum per annum, payable semi-annually on the first days of May and November, in each year, on the presentation and surrender of the proper annexed coupons, both principal and interest being payable in gold coin of the United States, and they were each identified by a certificate thereon made by the trustee to the effect that the bond so certified was one of the series described in and secured by the said mortgage or deed of trust. Two thousand one hundred and forty-five of said bonds, aggregating two million one hundred and forty-five thousand dollars of principal, have been issued and are outstanding as valid obligations of the said defendant, The Texas Central Railway Company, and entitled to the benefit of the security of the said mortgage or deed of trust.

VI. *The court further finds*, that after making the said deed of trust, the charter of the defendant, The Texas Central Railway Company, was amended, and that thereupon, on or about May 16th,

1881, the defendant, The Texas Central Railway Company, executed and delivered to the cross-complainant, The Farmers' Loan and Trust Company, a certain other deed of trust, dated that day, wherein and whereby, for the purpose of meeting the expense of constructing, completing and putting into operation the extension of its railway and its branch line authorized to be constructed by the amendment to its charter, and for the purpose of exchang-
11 ing and redeeming the series of bonds above described, to the amount of two million one hundred and forty-five thousand dollars, secured by the first above-mentioned deed of trust, said railway company, in order to secure the payment of a certain other series of one-thousand-dollar bonds to be issued for the purposes aforesaid, at the rate of fifteen thousand dollars for each mile of road, all to bear said last-mentioned date, did grant and convey unto the cross-complainant, its successors and assigns, all and singular the main line of the said Texas Central Railway Company's railway, then built and to be built, beginning at the down of Ross, in McLennan county, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackleford, Stephens, Throckmorton, Haskell, Knox, Bayler, Kings, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford and Sherman, to a point on the north boundary line of the State of Texas, between the 101st and 102nd meridian of west longitude, a distance of about 375 miles; and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River and Bowie, to a point on Red river in Bowie county, east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five miles, and also all and singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county on the said company's branch line of railway from Whitney to Red river in Bowie county; thence through the counties of Hopkins, Delta and Lamar to a point on Red river in Lamar county, near the mouth of Boggy river, a distance of about sixty-five miles, together with all side tracks, turn-outs, rolling stock, equipments and materials, all rights of way and tracks, depot and shop grounds, tenements and her-ditaments, rights and franchises, including and meaning to include all the property, real and personal, then ac-
quired or which might thereafter be acquired by the said
12 railway company in the State of Texas, used for and pertaining to the operation of the said railway, as therein described; which said conveyance of mortgage was made in trust, on certain terms and conditions, for the benefit of the holders and owners of the said last-mentioned bonds and of the interest coupons thereon annexed, and which said conveyance of mortgage or deed of trust, so far as the same affected property which was already subject to the lien of the first mortgage or deed of trust, dated September 15th

1879, and previously made to the Farmers' Loan and Trust Company as above stated, was in all respects subsequent and subsidiary to the lien of said first mortgage or deed of trust.

VII. *The court further finds* that in the said last-mentioned deed of trust it was, among other things, provided that in case the Texas Central Railway Company should fail to pay any of the interest on any of the said bonds at any time when the same might become due and payable, and such default should continue sixty days after demand, then and thereupon the principal of all the said bonds should be and become immediately due and payable.

VIII. *The court further finds* that the said last-mentioned mortgage or deed of trust was and is the proper act and deed of the defendant, The Texas Central Railway Company, by it authorized, made and delivered in all respects in conformity to law, and that the same was duly recorded in the offices of the clerks of the several counties wherein said railroad and other property affected thereby was situated, on or about July 28th, 1881, so as to be and constitute a first lien upon the mortgaged premises and property therein mentioned and described, except as to that portion thereof above first described as subject to the lien of the first mortgage of September 15th, 1879, above mentioned, and as to that portion of the mortgaged premises and property, it was so recorded so as to constitute a second lien on the same, subject only to the lien of the said first mortgage. That the said mortgage or deed of trust of May 16th, 1881, was also registered, in all respects according to law, so as to affect the chattels and other personal property of the said railway company in each and every one of said counties, the original,
13 or a certified copy thereof, remaining in each case on deposit.

IX. *The court further finds*, that the bonds to secure which the mortgage or deed of trust of May 16th, 1881, was made, were all dated that day, and were made for the sum of one thousand dollars each, payable to bearer May 1st, 1911, (and they are designated for convenience as the bonds of 1911) with interest at seven per centum per annum payable semi-annually on the first days of May and November in each year, on the presentation and surrender of the proper annexed coupons, both principal and interest being payable in gold coin of the United States, and they were each identified by a certificate thereon, made by the trustee, to the effect that the bond so certified was one of the series described in and secured by the said mortgage or deed of trust of May 16th, 1881. Under the said last-mentioned mortgage or deed of trust one thousand two hundred and fifty-four of said bonds, aggregating one million two hundred and fifty-four thousand dollars have been issued and are outstanding, as valid obligations of the said defendant, The Texas Central Railway Company, and entitled to the benefit of the security of the said mortgage or deed of trust of May 16th, 1881.

X. *The court further finds*, that on or about the first day of October, 1884, the said defendant, The Texas Central Railway Company, made and delivered a certain other mortgage or deed of trust to the defendant, The Metropolitan Trust Company of the City of New

York, to secure a series of bonds to be issued and to be known as general mortgage bonds of said company, and that said railway company did, by said general mortgage or deed of trust, grant and convey to the said Metropolitan Trust Company of the City of New York, all the property theretofore conveyed to the Farmers' Loan and Trust Company by the mortgages or deeds of trust hereinabove set forth, and either of them. But the court does hereby find and adjudge that the rights, liens and claims of the said Metropolitan Trust Company of the City of New York, and the beneficiaries under its trust, so far as the same exist, are in all respects subsequent and subsidiary and junior to the rights and equities of
14 the cross-complainant herein, as trustee under the said mortgages or deeds of trust so made to the cross-complainant as aforesaid, and of the holders of the bonds, to secure which the same were made respectively, both of the said mortgages or deeds of trust to the cross-complainant being prior liens to the said general mortgage; the first as to the property therein described, and the second as to the entire property of the defendant railway company; that the general mortgage bonds provided to be issued under the said deed of trust to the Metropolitan Trust Company of the City of New York, were duly executed and signed by the said defendant railway company, and delivered to the said Metropolitan Trust Company for the purpose of having the said trust company certify the same, as provided in the said deed of trust; but that the said Metropolitan Trust Company declined making such certification, on the ground that the mortgage had not been recorded in certain of the counties mentioned in the said act of mortgage, through which the Texas Central Railway Company had a right, under its charter, to construct the line of railway mentioned in said mortgage, but through which no railroad had, at that time, or has now, been constructed; that while the said mortgage was undergoing recording in the said counties aforesaid, the Texas Central Railway Company, on or about the first day of November, 1884, in settlement of its indebtedness to the Houston & Texas Central Railroad Company, a corporation organized under the laws of the State of Texas, did make and execute its sixteen certain promissory notes—fifteen thereof for the sum of fifty thousand dollars each, and one thereof for the sum of eleven thousand nine hundred and ninety-two dollars and four cents—and for the security of each of the said fifty-thousand-dollar notes, the said Texas Central Railway Company did pledge to the said Houston & Texas Central Railway Company one hundred and fifty of its said general mortgage bonds, and for the security of its said note of eleven thousand nine hundred and ninety-two dollars and four cents, the said Texas Central Railway Company did so pledge thirty-six of its said general mortgage bonds, thus making a pledge of a total amount of general mortgage bonds of two million two
15 hundred and eighty-six thousand dollars, being the total amount of said general mortgage bonds which the said Texas Central Railway Company was authorized to issue for the length of the road already built by it; that all of the said notes were dated November first, 1884, and all due on demand; that due demand

has been made for the payment of said notes on the Texas Central Railway Company, which has failed to pay the same; that in order to make a pledge of said bonds, which were not yet countersigned and certified by the trustee, the said Texas Central railway did issue and deliver to the said Houston & Texas Central Railway Company its certificates or obligations in lieu of said bonds, obligating itself to deliver said bonds, as soon as executed and signed by said trustee, to said Houston & Texas Central Railway Company. That said Houston & Texas Central Company did pledge said notes of said Texas Central Railway Company, together with the certificates for the bonds securing the same, to the complainant herein, Morgan's Louisiana & Texas Railroad and Steamship Company, as part security for its indebtedness, due by said Houston & Texas Central Railway Company to the said complainant; and that the complainant herein, Morgan's Louisiana & Texas Railroad and Steamship Company, is the holder, as pledgee, of all of the said notes of the Texas Central Railway Company, as also certificates for the bonds securing the same. And that the complainant herein, Morgan's Louisiana & Texas Railroad and Steamship Company, has an equitable lien upon all of the property above described, to the amount of $761,992.04, with six per centum per annum interest thereon from the first day of November, 1884, until paid; said lien, however, being junior and subordinate in all respects, upon the property above described, to the liens growing out of the mortgages or deeds of trust as aforesaid executed to The Farmers' Loan and Trust Company, cross-complainant herein, and that in case the proceeds of the sale of the said property, as hereinbelow ordered to be sold, shall not be sufficient to pay all liens and charges herein decreed to be prior to the lien and charges of Morgan's Louisiana & Texas Railroad and Steamship Company, and also the sum herein decreed to be paid to the said Morgan's Louisiana & Texas
16 Railroad and Steamship Company the said last-named company shall have execution against the said Texas Central Railway Company for all such overplus remaining unpaid as aforesaid.

XI. *The court further finds*, that the defendant, The Texas Central Railway Company, was on May 1st, 1885, and still is, insolvent and unable to meet or pay its obligations, including the coupons issued on its bonds secured by the said mortgages or deeds of trust to the Farmers' Loan and Trust Company, respectively, maturing upon that day, and that it wholly failed to pay the same, and that it made default in the payment of all the said coupons which matured May 1st, 1885, upon the bonds secured by the said mortgages or deeds of trust, or either of them, and that it has not paid any of the said coupons maturing on either of said mortgages or deeds of trust which fell due November 1st, 1885, nor those which fell due May 1st, 1886, nor any coupon which matured since that day, but that all the said coupon interest remains in default and overdue and unpaid; and further, that payment of said interest has been duly demanded, and that such default has continued sixty days after such demand and that therefore the principal of all the said

bonds secured by the said deeds of trust and each and all of them (including both the bonds of 1909 and the bonds of 1911) is and has become immediately due and payable.

XII. *The court further finds*, that the principal and interest overdue and unpaid upon the bonds secured by the said deeds of trust amounts as follows, namely :

First. As to the mortgage dated September 15th, 1879, that the principal sum of all the bonds of 1909 is two million one hundred and forty-five thousand dollars. That on the first day of May, 1885, and again on the first day of November, 1885, and again on the first day of May, 1886, and again on the first day of November, 1886, there matured and fell due coupons representing interest on the said bonds, amounting on each of said days to the sum of seventy-five thousand and seventy-five dollars, so that the amount of said coupon interest in the aggregate amounts to the sum three hundred thousand and three hundred dollars, and that interest is due upon said coupons from the time when they respectively
17 matured to the date of this decree, amounting to the sum of twenty-one thousand five hundred and twenty-one $\frac{5}{100}$ dollars, and that interest is also due on the principal sum of said bonds from November 1st, 1886, when the last coupon matured, amounting to sixty-six thousand seven hundred and thirty-three and $\frac{33}{100}$ dollars, so that the entire amount of principal and interest due on said bonds of 1909 to the date of this decree is the sum of two million five hundred and thirty-three thousand five hundred and fifty-four and $\frac{85}{100}$ dollars, all of which is payable in lawful gold coin of the United States.

Second. As to the deed of trust dated May 16th, 1881, that the principal sum of all the bonds of 1911 is one million two hundred and fifty-four thousand dollars. That on the first day of May, 1885, and again on the first day of November, 1885, and again on the first day of May, 1886, and again on the first day of November, 1886, there matured and fell due coupons representing interest on said bonds, amounting on each of said days to the sum of forty-three thousand eight hundred and ninety dollars, so that the amount of said coupon interest in the aggregate amounts to the sum of one hundred and seventy-five thousand five hundred and sixty dollars, and that interest is due upon said coupons from the time when they respectively matured to the date of this decree, amounting to the sum of thirteen thousand four hundred and $\frac{81}{100}$ dollars, and that interest is also due on the principal sum of said bonds from November 1st, 1886, when the last coupon matured amounting to thirty-nine thousand and thirteen and $\frac{33}{100}$ dollars, so that the entire amount of principal and interest due on said bonds of 1911 to the date of this decree is the sum of one million four hundred and eighty-one thousand nine hundred and seventy-four and $\frac{13}{100}$ dollars, all of which is payable in lawful gold coin of the United States.

XIII. *The court further finds*, that by reason of the default of the said Texas Central Railway Company to pay the said coupon interest due as aforesaid, and any of it, and by reason of other mat-

ters and things hereinabove alleged, the conditions of the said mortgages and deeds of trust of September 15th, 1879, and May 16th, 1881, and of each of them, made by the Texas Central Railway Company to the Farmers' Loan and Trust Company have
18 been broken, and that the said mortgages and deeds of trust, and both of them have become absolute, and that the trustee is entitled to a decree for the sale of all the said mortgaged property to satisfy the principal and interest of the said bonds secured by the said mortgages or deeds of trust respectively, and all of them.

XIV. *And the court finds*, that the claim of the complainant, Morgan's Louisiana & Texas Railroad and Steamship Company, is in all respects subsequent and subsidiary and junior to the lien of the mortgages or deeds of trust made to the Farmers' Loan and Trust Company as aforesaid, and each of them upon the property described in the foregoing deeds of trust to said Farmers' Loan and Trust Company.

XV. *The court doth therefore order, adjudge and decree*, that the principal sums specified in the said bonds, secured by the mortgages or deeds of trust made to the Farmers' Loan and Trust Company, bearing date September 15th, 1879, and May 16th, 1881, respectively, and hereinabove described, and each and all of said sums have now become due and payable, in accordance with the terms of the said instruments and of the said mortgages or deeds of trust so made to said trustee as aforesaid.

XVI. *And the court doth further order, adjudge and decree*, that the said defendant, The Texas Central Railway Company, shall within ten days from the date of this decree, pay into this court, for the use and benefit of the holders of the bonds and unpaid coupons secured by the said mortgages or deeds of trust to the Farmers' Loan and Trust Company the sum of four million and fifteen thousand five hundred and *and* twenty-eight and $\frac{98}{100}$ dollars in gold coin of the United States, with interest thereon from the date of this decree at the rate of eight per cent. per annum; and also a sufficient sum of money to defray the costs of this cause to be taxed.

XVII. *The court doth further order, adjudge and decree*, that in default of the payment of the sums so above ordered to be paid by the said defendant, or by some other person on its behalf, then all the equity of redemption of the said defendant, The Texas Central Railway Company, and of all the parties to this
19 suit, and of all the holders of bonds or other claims, issued under and secured by the mortgage made to the Metropolitan Trust Company of the City of New York, of, in or to the said mortgaged premises property, assets, rights and franchises, and every part and parcel thereof, described in the said mortgages or deeds of trust to the cross-complainant, The Farmers' Loan and Trust Company, or either of them, including all property embraced within the terms of the said mortgage of May 16th, 1881, and not included within the terms of the mortgage of September 15th, 1879, shall be barred and foreclosed, and that in default of such payment all the said mortgaged premises and property, real, personal or mixed, rights and franchises, shall be sold to the highest bidder for cash,

without appraisement or redemption, at public auction at twelve o'clock noon, at the door of the court-house of the county of McLennan, in the city of Waco, in the State of Texas, at a day to be named by the commissioners herein appointed, in their advertisement of sale, and previous notice of the time and place of such sale shall be given by publication once a week for the period of eight successive weeks prior to the time of such sale, in two newspapers, one published in the city of Waco, in the State of Texas, and the other in the city of New York, in the State of New York. The commissioners, or either of them, may adjourn the sale from day to day, or week to week without further advertisement, but only on request of the cross-complainant or its solicitors, or by the order of the court or a judge thereof.

XVIII. *And it is further ordered, adjudged and decreed*, that the railroad property and premises, as described in the said mortgages to the Farmers' Loan and Trust Company, shall be sold as one parcel and as an entirety, the court hereby finding such mode of sale to be for the best interests of all concerned, and upon the following terms and conditions, to wit:

First. Sale shall be for cash, and the purchaser at the sale shall then and there pay over to the master commissioners the sum of twenty-five thousand dollars in cash, and the remainder of said bid upon confirmation of the sale and delivery of title, as hereinafter provided.

Second. Upon confirmation of the sale and delivery of title, the purchaser shall pay in cash such sums as may be ascertained, on due reference to and report by the master sufficient to pay off and satisfy all the indebtedness of the receivers incurred by them in this cause, including all the expenses and costs of the receivers' administration of the property, all claims and demands adjudged against them growing out of their operation of the property, all receivers' certificates heretofore ordered to be issued and remaining unpaid, all indebtedness for pay rolls, materials and supplies due by the said receivers, and, also, the compensation of the receivers and their solicitors, and if any claim remains unsettled or unascertained at the date of the confirmation of the sale and delivery of title to the purchaser, which should be or may afterwards be adjudged to be a claim against the said receivers, and the cash paid in shall not be sufficient to pay off the same, the said claim or claims so adjudged shall be and are hereby decreed to be a first and prior lien on the said railway, in the hands of the purchaser, and may be so enforced by the order of this court. And no claim shall be filed against the said receivers growing out of their administration of the property, unless the same shall be filed within sixty days from the date of the order confirming the sale herein directed to be made. And the special master in chancery, John G. Winter, heretofore appointed in this case, is hereby directed to examine and report to this court, on or before the date fixed for the sale of the property herein, after due and proper notice to the parties concerned what amounts are to be paid for all of the purposes mentioned in this subdivision.

Third. The purchaser shall also pay in cash the costs of this suit, to be taxed, and also the compensation of the cross-complainant herein for its services, charges and expenses in the execution of its trusts respecting the two mortgages made to it, including its own compensation and its disbursements and allowances for solicitors and counsel fees in the execution of its trusts respecting such mortgages, and for services in this cause, and for all proper expenses attending upon the sale of the property subject to the said mortgages including the commissions and compensation of the commissioners making such sale, all which charges and expenses
21 shall be hereafter fixed and allowed by the court or a judge thereof, and as to all matters mentioned in this subdivision, except the compensation of the special master commissioners; reference is hereby made to John G. Winter, special master in chancery, with directions to examine and report to the court the proper amounts to be fixed and allowed for the same, and also any other allowances proper to be made to solicitors and counsel in this cause.

Fourth. After fully paying off all the claims entitled to be the first paid out of the proceeds of the sale in cash, above set forth in subdivisions 1st, 2nd and 3rd of this section, the remainder of said bid may be paid either in cash or in bonds, or overdue coupons belonging thereto, secured by the said mortgages or either of them, made to the Farmers' Loan and Trust Company, as aforesaid. The said bonds and coupons to be received at such price or value as will be equivalent to the distributive amount that the holders thereof would be entitled to receive in case the entire amount of the bid were paid in cash. And whereas, $2,145,000.00 of first-mortgage bonds were issued upon and hold a first lien on one hundred and forty-three miles of said railway and property, and $1,254,000.00 of bonds were issued upon and hold a first lien on eighty-three miles of said railway and property, it is therefore ordered and directed that the remainder of the said cash bid, after the aforesaid payments entitled to be first paid, be divided into two parcels, in the proportion and on the basis of the mileage of the road sold, the total line of road sold being two hundred and twenty-six miles, said liens on first-mortgage bonds, to wit: the bonds of 1909, being the first lien on the 143 miles of said road, as aforesaid, and the bonds of 1911 being a first lien upon the 83 miles of said road, as aforesaid, therefore, the remainder of the said bid shall be divided so as to set off $\frac{143}{226}$ of said amount to be distributed among the bonds of 1909, and $\frac{83}{226}$ of said bid to be distributed among the bonds of 1911.

Fifth. And in case the amount of said bid shall be more than sufficient to pay the sums and amounts set forth in subdivisions 1st, 2nd, 3rd and 4th above of this section, the amount of such overplus shall be applied to the payment of the sum herein decreed
22 to be due to the complainant, Morgan's Louisiana & Texas Railroad and Steamship Company.

XIX. *And it is further ordered, adjudged and decreed,* that if the proceeds of the sale of the property above directed to be made shall not be sufficient to satisfy the sum herein adjudged in favor of the

Farmers' Loan and Trust Company, trustee, and in favor of Morgan's Louisiana & Texas Railroad and Steamship Company, the said complainant, Morgan's Louisiana & Texas Railroad and Steamship Company, and the said cross-complainant, The Farmers' Loan and Trust Company, are hereby declared to have a personal judgment and decree against the said Texas Central Railway Company for the balance that will remain due to them respectively, over and above the proceeds of the said sale, and shall have execution in due form of law for the balance due them, respectively, and leave is hereby given to the said complainant and cross-complainant to levy the said executions upon the property of the defendant, now in the hands of the receivers, if any not subject to the mortgages above mentioned, and to sell the same in due form of law, and to apply the proceeds of the same to the satisfaction of the said balance due them respectively.

XX. *It is further ordered*, that Charles Dillingham and John G. Winter be, and they are hereby appointed special master commissioners for the purpose of making the sale hereby decreed and to execute and deliver a deed of conveyance of the property so to be sold to the purchaser or purchasers thereof on the order of the court or a judge thereof in case of such sale.

The court reserves, however, the right in term time or at chambers to appoint another special master commissioner with like powers in case of the death, disability or declination to serve of either of the special master commissioners hereby designated.

The sale so to be made by said master commissioners shall be forthwith reported by them to the court, and the same shall stand confirmed unless within ten days from the filing of said report some party entitled so to do shall file exceptions to said sale, and in case of the filing of any such exceptions the same shall immediately stand for hearing before the court or a judge thereof.

23 XXI. *And it is further ordered, adjudged, and decreed*, that the purchaser or purchasers of the property herein and hereby ordered to be sold shall be invested with and shall hold, possess and enjoy the said mortgaged premises and property, and all the rights, privileges and franchises appurtenant thereto, as fully and completely as the said Texas Central Railway Company, defendant herein, now holds or enjoys, or at the time of the commencement of this suit, held and enjoyed, or is or was entitled to hold or enjoy the same; and further, that the purchaser or purchasers shall have and be entitled to hold said railroad and property free and discharged from the claims of all parties to this suit, including the original complainant, and all intervenors herein.

XXII. *It is further ordered, adjudged and decreed*, that any party to this cause, or the receivers or master commissioners herein appointed may apply to the court for such orders necessary for the carrying of this decree into execution, as equity and the nature of the matter may require.

In open court, April 12th, 1887.

DON A. PARDEE,
Circuit Judge.

Endorsed as follows, to wit: Morgan's Louisiana and Texas Railroad and Steamship Company *vs.* The Texas Central Railway Company, The Farmers' Loan and Trust Company, as trustee, and the Metropolitan Trust Company of the City of New York, as trustee. Original bill. In equity, No. 21. The Farmers' Loan and Trust Company, as trustee, *vs.* The Texas Central Railway Company, The Metropolitan Trust Company of the City of New York, and Morgan's Louisiana and Texas Railroad and Steamship Company. Cross bill No. 33. Final decree. Filed April 15, 1887. J. H. Finks, clerk.

24 *Petition of Purchasing Trustees for Possession of Railway Property and Order Thereon.*

United States Circuit Court, Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21.

United States Circuit Court, Northern District of Texas, at Waco.
In Equity.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33.

To the honorable the judges of said court:

The petition of Charles Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, respectfully represents:

That, pursuant to a final decree rendered in the above-entitled causes, a sale of the hereinafter-described property of The Texas Central Railway Company, defendant, was made by John G. Winter and Charles Dillingham, the special master commissioners by said decree appointed for that purpose, on the 22d day of April, 1891; that at said sale your petitioners became the purchasers of all the property and premises described in said final decree, to wit:

All and singular the main line of the Texas Central Railway Company's railway, built and to be built, beginning at the town of Ross, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackelford, Stephens, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore, Hansford and Sherman, to a point on the north boundary line of the State of Texas, between the 101st and 102d meridian of west longitude, a distance of about three hundred and seventy-five (375) miles; and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van

Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River and Bowie, to a point on Red river, in Bowie county, east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five (235) miles; and also all and singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county, on the said company's branch line of railway from Whitney to Red river, in Bowie county; thence through the counties of Hopkins, Delta and Lamar, to a point on Red river in Lamar county, near the mouth of Boggy river, a distance of about sixty-five (65) miles; together with all side tracks, turn-outs, rolling stock, equipments and materials, all rights of way and tracks, depot and shop grounds, tenements and hereditaments, rights and franchises, including and meaning to include all the property, real and personal, of the said railway company, in the State of Texas, used for and pertaining to the operation of the said railway.

That said sale has been duly confirmed, but that the title deed thereto has not been executed nor delivered to your petitioners.

That, under the provisions of said decree, the purchasers at said sale were to pay to the master commissioners twenty-five thousand dollars ($25,000.00) in cash and the remainder of the purchase price upon confirmation of the sale and delivery of title, and that upon such confirmation and delivery the purchasers were to pay in cash such sums as might be ascertained by the master in chancery sufficient to pay and satisfy all charges, liabilities, costs and expenses whatsoever, arising out of the receivership in said causes, and such charges unsettled and unascertained at the date of the confirmation of said sale and delivery of title thereunder, not covered by cash paid in by purchasers, should be a lien on said railway in the
26 hands of the purchasers thereof, and the balance of the purchase price might be paid in cash or in bonds or overdue coupons belonging thereto, secured by the mortgages, or either of them, made to the said Farmers' Loan and Trust Company.

That all of the particulars aforesaid, and other necessary ones, will more fully appear from said final decree in the above-entitled causes made and duly entered in the office of the clerk of your honorable court, on the 12th day of April, 1887, and from the notice of sale published by said special master commissioners, of which a copy is contained in the report of said special master commissioners, on file in this honorable court, and to which decree and notice reference is made as part hereof.

That your petitioners desire to obtain possession of the property so purchased by them, and to comply with the terms of said decree by paying into the hands of said receivers such sums as have been ascertained by the master in chancery sufficient to pay off and satisfy the charges, costs, liabilities and expenses arising out of the receivership in said causes, and which have been so ascertained, and to allow any such charges unsettled and undetermined to remain as liens on said railway in the hands of the purchasers thereof until the payment thereof, and with such reservation of the rights

to resume possession of said property in case of non-payment of any such charges as to your honors may seem meet and just.

Wherefore, petitioners pray that your honors will render an order in the above-entitled causes, instructing and directing Charles Dillingham and Benjamin G. Clarke, receivers of the property of the defendant railway company, to execute and deliver to said purchasers a deed to said property and to deliver said property to your petitioners upon their demand or upon demand by their counsel or duly authorized agent or agents, said delivery to be subject to the payment of such amounts in cash, and to such a lien for unascertained charges, liabilities, cost and expenses, as to your honors may seem meet and proper, and subject to such other and further provisions as to resumption of possession of said property in case of non-payment of any such charges when ascertained, or to
27 such other limitations and provisions as to your honors may seem meet and just; and petitioners pray for all further and necessary orders in the premises, and for general relief.

TURNER, McCLURE & RALSTON,
WILLIE & BALLINGER,
M. F. MOTT, *For Petitioners.*

Order.

The court considering the foregoing petition and the record in these causes, and being fully advised in the premises:

It is now ordered, adjudged and decreed as follows, to wit:

First. That Charles Dillingham and Benjamin G. Clarke, receivers of the property of the defendant railway company, do execute and deliver to said petitioners a deed to the hereinafter-described property, and that they do deliver all and singular the following-described property to Charles Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, purchasers of the same at the sale heretofore made thereof by order of this court on the 22d day of April, 1891, or to the counsel, agent or agents of said purchasers; said property being described as follows, to wit:

All and singular the main line of the Texas Central Railway Company's railway, built and to be built, beginning at the town of Ross, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackleford, Stephens, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Robert, Hutchinson, Moore, Hansford and Sherman, to a point on the north boundary line of the State of Texas, between the 101st and 102d meridian of west longitude, a distance of about three hundred and seventy-five (375) miles; and also all and singular the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt,
28 Rains, Wood, Hopkins, Franklin, Titus, Red River and Bowie, to a point on Red river, in Bowie county, east of the

eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five (235) miles; and also all and singular the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county, on the said company's branch line of railway from Whitney to Red river, in Bowie county; thence through the counties of Hopkins, Delta and Lamar, to a point on Red river in Lamar county, near the mouth of Boggy river, a distance of about sixty-five (65) miles; together with all side tracks, turn-outs, rolling stock, equipments and materials, all rights of way and tracks, depot and shop grounds, tenements and hereditaments, rights and franchises, including and meaning to include all the property, real and personal, of the said railway company, in the State of Texas, used for and pertaining to the operation of the said railway.

Second. That said purchasers at said sale do pay in cash, unto said receivers, the sum of one hundred and twenty thousand dollars, to be applied to the payment of *the payment of* the charges, liabilities, costs and expenses arising out of the receiverships in said causes, and heretofore fixed and ascertained by the master in chancery herein, as appears from the report of said master now on file in this court.

Third. That said purchasers, and those claiming under them, shall take and receive said property so transferred, assigned and delivered to them, upon the 10th day of September, A. D. 1891, at the hour of 12 o'clock m., subject to all charges, liabilities, costs and expenses whatsoever arising out of the receivership in said causes, and which are now unsettled or unascertained, which said charges, liabilities, costs and expenses, shall be, and are hereby declared to be a lien on said railways and other hereinabove-described property in the hands of the purchasers thereof until the payment thereof; and said property is so transferred, assigned and delivered to said purchasers subject to all such charges, liabilities, costs and expenses now existing, or which may hereafter be made against said receivers, arising out of their receiverships, and the court reserves
29 and retains jurisdiction over said railways and properties, and over said purchasers and those claiming under them, for the purpose of determining all such charges, costs, and expenses whatsoever, and for the purpose of fully protecting the receivers against any liabilities on any claim or demand existing, or to exist, against them, and for the purpose of protecting those having claims against said receivers.

Fourth. That this cause is retained and kept open as to said purchasers, for the purpose of ascertaining and determining all claims, demands and liabilities against said receivers, growing out of the operation of said railways or against said railways and other property hereinbefore described and to be surrendered to said purchasers, which have arisen, or may arise out of said receiverships. All such claims, demands and liabilities not already presented in these causes by petition or intervention or otherwise shall, if not paid by said purchasers in due course, be made and presented by intervention in this cause, for the purpose of being ascertained and

determined in and by such intervention proceedings, and any orders, judgments or decrees rendered in such intervention proceedings, or in the matter of any interventions or petitions heretofore filed in the causes, may be enforced, and shall only be enforced against the property hereinabove described and transferred to said purchasers, to the same extent that a judgment could have been enforced if said property had not been surrendered into the possession of said purchasers, but was still in possession of said receivers. Such intervention proceedings must be filed in this court on or before the first day of March, 1892, and after that date no further interventions shall be permitted in these causes, and the rights of any claimant who shall not, on or before that date, have commenced intervention proceedings to avail himself of the remedies herein provided for his benefit, shall cease and determine. Said receivers shall publish a notice in one of the daily newspapers in the cities of Waco and Dallas, Texas, notifying all claimants to present their claims against the Texas Central Railway Company to the agents of said purchasers at the offices of said Texas Central Railway Company at Ross or at Kaufman, Texas, and if the same are not settled or adjusted, that then the said claimants shall intervene in the manner aforesaid, and within the time aforesaid, to wit: on or before the first day of March, 1892. Said advertisement shall be commenced within ten days after the entry of this order, and shall be inserted twice a week for four (4) consecutive weeks.

Fifth. That nothing in this decree contained is intended to affect, or shall be construed as affecting, the status of any pending or undetermined litigation in which said receivers appear as parties; such litigation shall continue to determination in the name of said receivers, with the right reserved to said purchasers, should they be so advised, to appear and join in any such litigation; and nothing in this decree contained is intended to affect, or shall be construed as affecting the receivership of any of the property of the defendant railway company other than the property so transferred to said purchasers, possession of which said property other than that so transferred is retained for further administration, subject to the orders of this court.

Sixth. That said purchasers or said receivers may apply at the foot of this decree for such other and further relief as may be just.

DON A. PARDEE,
Circuit Judge.

In chambers, August 28, 1891.

Endorsed: No. 21. U. S. circuit court, northern district of Texas, at Waco. Morgan's Louisiana & Texas Railroad and Steamship Co. *vs.* Texas Central Railway Company *et al.*, and The Farmers' Loan & Trust Co. *vs.* The Texas Central Railway Co. *et al.* Filed September 15, 1891. J. H. Finks, clerk.

31 *Petition of Purchasing Trustees for Modification of Decree Dated August 28, 1891, Authorizing Receivers to Deliver Possession of Railway Property to Purchasers and Order Thereon.*

United States Circuit Court, Northern District of Texas, at Waco.
In Equity.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21

United States Circuit Court, Northern District of Texas, at Waco.

THE FARMERS' LOAN & TRUST COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33.

To the honorables the judges of said court:

The petition of Charles Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, respectfully represents: That, in the order heretofore entered in this cause, upon the petition of your petitioners for the possession of the railway property of the defendant company, it was ordered that Charles Dillingham and Benjamin G. Clarke, receivers of the property of the defendant railway company, should execute and deliver to petitioners a deed to the property described in said order, but that said order was erroneous, in that it should have ordered said deed to be executed and delivered to petitioners by Charles Dillingham and John G. Winter, special master commissioners, under decree of this honorable court of date April 12th, 1887, to make the sale of the property of the defendant railway company.

That in and by said final decree of date April 12th, 1887, it is provided that of the purchase price bid at the sale of the railway properties of the defendant, made under said decree, certain payments should be made in cash, and the remainder of the bid should be paid either in cash or in bonds or overdue coupons belonging
32 thereto secured by the mortgages in said decree described, or either of them, made to the Farmers' Loan & Trust Company, and that said bonds and coupons should be received at such price or value as would be equivalent to the distributive amount that the holders thereof would be entitled to receive in case the entire amount of the bid was paid in cash; that said sale has been duly confirmed, but your petitioners have not yet wholly completed the terms of their bid.

That under the terms of the final decree in this cause any party hereto may, at any time, apply to the court for such orders as might be necessary to carry such decree into execution as the equity and nature of the case might require; that your petitioners desire to obtain an order of this honorable court, authorizing the special master commissioners to credit upon the bonds and coupons in

their hands, received by them on account of the purchase price at the sale herein, the *pro rata* amount that the same would be entitled to receive if the entire purchase price had been paid in cash, the said bonds and coupons to be thereafter returned to your petitioners.

That your petitioners also desire to obtain the revision and modification of the said order, so rendered upon their petition for possession, so as to make the same conform to the prayer of this petitioner.

Wherefore, petitioners pray that your honors do now rescind and annul said order, of date August 28, 1891, and your petitioners do now pray that your honors do order, adjudge and decree that Charles Dillingham and John G. Winter, special master commissioners, appointed under decree of this court, of date April 12, 1887, do, upon compliance by petitioners with the terms of the order hereon to be entered, to execute and deliver to petitioners a deed to the property described in said order of date August 28th, 1891; and that the receivers in this cause, Charles Dillingham and Benjamin G. Clarke, do thereafter, as soon as may be possible, transfer and deliver, all and singular, the said described property to your petitioners.

And petitioners further pray that your honors will, by your order herein to be entered, allow petitioners to satisfy their bid in this cause, in whole or in part (other than those portions of said
33 bid required by said decree of April 12th, 1887, to be paid in cash), by producing before said master commissioners any bonds and overdue coupons secured by the mortgages made to the Farmers' Loan & Trust Company, and described in said decree, and by having stamped or written upon said bonds or coupons the distributive amount that your petitioners, as holders thereof, would be entitled to receive in case the entire amount of bid were paid in cash, and that said special master commissioners, after so writing or stamping upon said bonds, shall return same to petitioners.

And petitioners pray for all further and necessary orders in the premises, and for general relief.

TURNER, McCLURE & RALSTON,
M. F. MOTT, *Solicitors for Petitioners.*

Order.

The court, considering the foregoing petition, and being fully advised in the premises, it is ordered, adjudged and decreed, that the order of court herein entered August 28, 1891, on the petition of Charles Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, for possession of the railway property of the defendant company, be now annulled and rescinded.

It is further ordered, adjudged and decreed that Charles Dillingham and John G. Winter, special master commissioners, appointed under decree of this court, of date April 12th, 1887, be, and they are now, directed, upon compliance by said petitioners with the terms of this order, to execute and deliver to said petitioners a deed

to the property purchased by said petitioners on the 22d day of April, 1891, and described as follows, to wit:

All and singular the main line of the Texas Central Railway Company's railway, built and to be built, beginning at the town of Ross, in McLennan county, Texas, extending through the counties of McLennan, Hill, Bosque, Hamilton, Erath, Comanche, Eastland, Callahan, Shackleford, Stephens, Throckmorton, Haskell, Knox, Baylor, King, Hardeman, Cottle, Motley, Childress, Hall, Collingsworth, Donley, Armstrong, Gray, Carson, Roberts, Hutchinson, Moore,
34 Hansford and Sherman, to a point on the north boundary line of the State of Texas, between the one hundred and first and one hundred and second meridian of west longitude, a distance of about three hundred and seventy-five (375) miles; and also, all and singular, the said Texas Central Railway Company's branch line, built or to be built, beginning at Whitney, in Hill county, and thence through the counties of Hill, Johnson, Ellis, Dallas, Kaufman, Rockwall, Van Zandt, Hunt, Rains, Wood, Hopkins, Franklin, Titus, Red River and Bowie, to a point on Red river, in Bowie county, east of the eastern boundary line of the Indian Territory, a distance of about two hundred and thirty-five (235) miles; and, also, all and singular, the said Texas Central Railway Company's branch line of railway, built or to be built, beginning at a point in Hopkins county, on the said company's branch line of railway from Whitney to Red river, in Bowie county; thence through the counties of Hopkins, Delta and Lamar, to a point on Red river, in Lamar county, near the mouth of Boggy river, a distance of about sixty-five (65) miles; together with all side tracks, turn-outs, rolling stock, equipments and material, all right of way and tracks, depot and shop grounds, tenements and hereditaments, rights and franchises, including and meaning to include all the property, real and personal, of the said railway company, in the State of Texas, used for, and pertaining to, the operation of said railway.

It is further ordered, adjudged and decreed, that said purchasers, and those claiming under them, shall take and receive said property so transferred, assigned and delivered to them, subject to all charges, liabilities, costs and expenses whatsoever, arising out of the receivership of said causes, and which are now unsettled or unascertained, which said charges, liabilities, costs and expenses, shall be, and are hereby declared to be, a lien on said railways and other hereinabove-described property, in the hands of the purchasers, thereof, until the payment thereof; and said property is so transferred, assigned and delivered to said purchasers, subject to all such charges, liabilities, costs and expenses now existing, or which may hereafter be made against said receivers, arising out of their receivership, and the court reserves and retains jurisdiction
35 over said railways and properties, and over said purchasers and those claiming under them, for the purpose of determining all such charges, costs and expenses whatsoever, and for the purpose of fully protecting the receivers against any liabilities on any claim or demand existing, or to exist, against them, and for the purpose of protecting those having claims against said receivers.

It is further ordered, adjudged and decreed, that said purchasers do forthwith, upon notice by said receivers, take charge of and conduct to determination in the name of said receivers, or of said purchasers themselves, should they be so advised, any and all pending or undetermined litigation in which said receivers appear as parties, or any such litigation which may hereafter arise, and relating to or arising out of the operation and management of said railways and other properties so transferred to said purchasers, not including, nor meaning to include, any litigation arising out of, or in relation to, any of the town lots or other property of the defendant company not transferred to said purchasers, nor any litigation arising upon notes or other obligations given in part payment of town lots or land of the defendant company, other than the property so transferred to said purchasers, and sold by said receivers, or by said defendant company before the appointment of receivers herein.

It is further ordered, adjudged and decreed, that this cause be, and the same is, retained and kept open as to said purchasers, for the purpose of ascertaining and determining all claims, demands and liabilities against said receivers, growing out of the operation of said railways, or against said railways and other property hereinabove described, and to be surrendered to said purchasers, which have arisen, or may arise, out of said receivership.

All such claims, demands and liabilities, not already presented in these causes by petition or intervention, or otherwise, shall, if not paid by said purchasers in due course, be made and presented by intervention in this cause, for the purpose of being ascertained and determined in and by such intervention proceedings, and any orders, judgments or decrees, rendered in such intervention proceed-
36 ings, or in the matter of any interventions or petitions heretofore filed in the causes, may be enforced, and shall only be enforced against the property hereinbefore described and transferred to said purchasers, to the same extent that a judgment could have been enforced if said property had not been surrendered into the possession of said purchasers, but was still in the possession of said receivers. Such intervention proceedings must be filed in this court on or before the 1st day of March, 1892, and after that date no further interventions shall be permitted in these causes, and the rights of any claimant who shall not, on or before that date, commence intervention proceedings to avail himself — the remedies herein provided for his benefit, shall cease and determine.

Said receivers shall publish a notice in one of the daily newspapers in the cities of Waco and Dallas, Texas, notifying all claimants to present their claims against them to the agents of said purchasers at the offices of said Texas Central Railway Company at Ross or at Kaufman, Texas, and if the same are not settled or adjusted, then the said claimant shall intervene in the manner aforesaid, and within the time aforesaid, to wit: on or before the first day of March, 1892. Said advertisements shall be commenced within ten days after the entry of this order, and shall be inserted twice a week, for four (4) consecutive weeks.

It is further ordered, adjudged and decreed, that nothing con-

tained in this decree is intended to effect, or shall be construed as affecting, the receivership of any of the property of the defendant railway company, other than the property so transferred to said purchasers; possession of which said property, other than that so transferred, is retained for further administration, subject to the orders of this court, in like manner as if this decree had never been entered or rendered.

It is further ordered, adjudged and decreed, that said purchasers or said receivers may apply at the foot of this decree for such other and further relief as may be just.

DON A. PARDEE,
Circuit Judge.

Nov. 4, 1891.

Filed Nov. 6, 1891.

J. H. FINKS, *Clerk*,
By C. A. RICARDSON, *Deputy.*

37 *Exceptions to Master's Reports on Receivers' Accounts.*

In the United States Circuit Court for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. In Equity.

and

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } In Equity. No. 33.

To the honorable the judges of said court:

Now at this time come Charles Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees and parties defendant herein, and except to the master's report of the quarterly account of the receiver Chas. Dillingham, for the quarter ending September 30, 1893, filed herein April 1, 1895, for the quarter ending December 31, 1893, filed herein April 3, 1895, for the quarter ending March 31, 1894, filed herein April 4, 1895, for the quarter ending June 30, 1894, and for the quarter ending September 30, 1894, both filed herein April 4, 1895, and to all accounts filed herein showing charges of $150 per month from September 25, 1891, to date. And in particular to the item of $150 per month charged in said accounts as disbursements and shown therein to have been paid to said Chas. Dillingham, receiver, as compensation for each month to said receiver, amounting in the aggregate to $450, charged in said quarterly accounts as compensation to said receiver and pray that said items be stricken out of said account and that the receiver be required to

account to this court for said monies so taken from the funds belonging to said receivership for the following reasons, to wit:

First. Because the said Chas. Dillingham has performed
38 no service entitling him to charge the sum of $150 per month, and he is not authorized to retain the same by any order of this honorable court.

Second. Because the said Chas. Dillingham had for the last three or four years had on deposit in the South Texas National bank an amount exceeding $40,000, of which said bank the said Charles Dillingham is and has been during the whole of said time vice-president. That these purchasing trustees and their agents and attorneys have been recently advised, and here so charge upon information and belief that during the whole of said time the said Charles Dillingham has been drawing from said bank the sum of $1,000 per annum, as a pretended compensation to said Charles Dillingham, for acting as vice-president of said bank, but they allege and here charge that the payment of said $1,000 per annum to said Dillingham is a mere pretense, and was made and intended and so received by him as interest upon said $40,000, which said sum he has received and appropriated to his own use and benefit.

That these facts have recently come to the knowledge of these purchasing trustees and their agents and attorneys, and for said reason were not urged before the master, and they now pray that this court inquire into said matter, and if necessary, these reports be referred back to the master for further action in this behalf.

L. W. CAMPBELL,
Attorney for Defendants, Purchasing Trustee.

Endorsed as follows: No. 21. Equity. Exceptions to master's reports on receiver's accounts. Filed April 8th, 1895. J. H. Finks, clerk.

Order Referring Exceptions to Receiver's Accounts to A. S. Lathrop, Esq.

United States Circuit Court, Northern District of Texas.

Original bill.

MORGAN'S LA. & T. R. R. & S. S. Co.
vs.
TEXAS CENTRAL R'Y CO. & ALS. } In Equity. No. 21.

39 United States Circuit Court, Northern District of Texas.

FARMERS' LOAN & TRUST CO., as Trustee,
vs.
TEXAS CENTRAL R'Y COMPANY ET ALS.

Cross-bill.

In the above-entitled cause it is ordered that the exceptions to master's reports this day filed, in the matter of the accounts of the receiver, be and the same are hereby referred to Abner S. Lathrop,

Esq., as special master, who is hereby instructed to examine into, take evidence upon and report in the premises, with his recommendations.

It is further ordered that all matters heretofore referred to the special master herein, and upon which no reports have been filed, be by said special master returned into court, and all the papers and documents connected therewith be delivered to the clerk.

A. P. McCORMICK,
Circuit Judge.
JOHN B. RECTOR,
U. S. District Judge.

April 8th, 1895.

Endorsed as follows: No. 21. Equity. Order referring exceptions to receiver's accounts to A. S. Lathrop, Esq. Filed April 8th, 1895. J. H. Finks, clerk, by C. A. Richardson, deputy.

Amended Exceptions of Purchasing Trustees.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND Steamship Company *et al.* *vs.* TEXAS CENTRAL RAILWAY COMPANY.	In Equity. No. 21. Original Bill.
FARMERS' LOAN AND TRUST COMPANY ET AL., as Trustee, *vs.* TEXAS CENTRAL RAILWAY COMPANY ET AL.	In Equity. 33. Cross-bill.

40 To the Honorable Abner S. Lathrop, special master in chancery:

Now at this time comes Charles Moran, Cornelius B. Gold and Henry K. McHarg, and show that the orders of the court referring the accounts of the receiver to the master, required that the master should give notice to all parties before passing upon said accounts. That these complainants have since about September, 1891, been parties to this suit, in that a short time prior thereto under the orders of the court the road-bed, right of way of the Texas Central Railway Company was sold, and was purchased by these complainants, and upon the report of sale being filed they became parties to said causes, and have continuously thereafter been parties thereto, but were not parties prior thereto. That the accounts objected to by exceptions on file, and which were referred to your honor, were all filed and acted upon since September, 1891, and at no time were these complainants notified or had any notice or knowledge of the filing of said accounts with said master, nor did he ever extend to them notices thereof. And they further show that they had no actual notice or knowledge until a short while since, that said receiver was charging in his quarterly accounts the sum of $150 per month, as his pretended compensation for acting as receiver for said road, and

that as soon as they ascertained said fact they filed objections and exceptions to said report before said master.

Second. That the amount claimed by the receiver under order of December 4, 1886, which allowed him to place himself upon the pay-roll at $150 per month, was never at any time by any order entered in said causes, either in general terms or by special reference, referred to the master, and he had no jurisdiction to pass upon the same and conclude the parties thereto, because said compensation was fixed by the court and was to continue until he ceased to act as such receiver or until the further order of the court, which was to be judged of by the court and not by the master. That the right of the receiver to such compensation or not was a matter specially reserved to the control and order of the court, and not the master, and at what date he should cease to draw his salary under
41 such order was a matter to be at any time referred to said receiver, and now is for the first time referred to this master.

Third. That upon exceptions filed by these complainants to the accounts of the receiver and the master's reports thereon, on, to wit, April 8th, 1895, by order duly entered on that date, said master's reports and the orders thereon confirming same from September, 1891, to date of the order, were duly referred back to this master, and no objection was made to said order of re-reference by the receiver though in court in person and by attorney when the order was made and the exceptions made thereon, and no claim was made that these parties were precluded from objecting to said accounts and reports and orders of confirmation thereof on account of any decrees confirming same or on any other ground. That said order of re-reference annulled and set aside such orders, if any have been made confirming the various reports of the master since September, 1891, and the facts are now open for rehearing and consideration by this master.

Fourth. That it would be inequitable and unjust to allow said receiver to retain said sum of $150 per month from September, 1891, to date, covering a period of nearly four years, aggregating nearly $6,000, and to preclude and estop these complainants from objecting, because the order allowing him to place himself upon the pay-roll of the company, was made when he was in active discharge of the duties as such receiver of the road, and it was not contemplated that such pay should continue after he had ceased to discharge his duties as such receiver. That in September, 1891, the road-bed with all its equipments, rolling stock, &c., were duly turned over to these complainants, purchasers thereof, and continuously since said time said receiver has had no duties to perform as receiver, and has had and held in his hands funds belonging to said company aggregating over $40,000, which he has been using and loaning out and collecting interest thereon, which he has appropriated to his own use and benefit, and has not accounted to this court for the revenues arising therefrom. That in making his quarterly accounts under oath to the master in chancery of this court falsely and deceitfully, and with the intent to defraud these complainants and other per-
42 sons, if any, entitled to an interest in said fund, secretly hid from said master the knowledge of said accumulation of in-

terest which he had received on said fund, as shown by exceptions filed to said reports, and by this means and others said receiver obtained a favorable report on said quarterly accounts, and the pretended decrees in confirmation thereof. That said master's reports are based on false affidavits and false reports and are frauds upon the rights of these complainants, and because of said fraudulent and deceitful practices in using said fund for his own benefit and withholding all knowledge thereof from said master and this court, said pretended orders confirming said reports are fraudulent and said receiver has forfeited all right, if any he had to any compensation, and should be required to account to this court for said sum of $150 per month charged upon said account from September 25th, 1891, the time when he ceased to act as receiver, and the $1,000 per year during the entire time he has been loaning out the funds of said company, which these complainants charge has continued for many years, and that he has accumulated thereby many thousands of dollars by using said funds for his own benefit, and in particular has he received as interest on said money from the South Texas national bank $1,000 per annum for the last six to eight years, which of right belongs to these complainants.

Fifth. And they further charge that in September, 1891, these complainants paid the said receiver the sum of $20,000, which he then and there received with the understanding and agreement with these complainants that said sum was the total balance due him for acting as such receiver of said road, and the pretended claim of $150 per month in addition to said large and exorbitant amount paid to him was a secret and fraudulent breach of faith practiced upon these complainants, done without their knowledge and in gross violation of the spirit and purpose of said settlement and agreement. That the former master in passing upon the various accounts of said receiver allowed him to retain in his custody all the vouchers belonging thereto, which said vouchers are all, except a few now in *the*
possession, in the city of Houston, Harris county, Texas, and
43 these complainants prays this honorable court to at once order said receiver to deliver to this master all of these vouchers, showing the various quarterly accounts filed by him from September, 1891, to date, except those in possession of this court, and upon hearing hereof that said receiver be required to amend his said various reports and account for the sum of $150 per month from September 25th, 1891, to date, and for said sum of $1,000 per annum for such time as he has received said sum from the South Texas national bank, as interest upon said money, and for general relief.

L. W. CAMPBELL,
Counsellor and Solicitor for Purchasing Trustee.

The foregoing being an exact copy of the original which has been lost or mislaid, it is agreed that it may be and hereby — substituted for the original which was filed with the master at the hearing at

Houston on November 4, 1895, and by him returned into court with his report and filed by the clerk on September 26th, 1896.

GEO. CLARK,
Sol. for Appellant.
L. W. CAMPBELL,
Sol. for Appellees.

Testimony.

MORGAN'S LOUISIANA & TEXAS RAILway & Steamship Company *vs.* TEXAS CENTRAL RAILWAY COMPANY *et als.*	Original Bill. In Equity. No. 21.
FARMERS' LOAN & TRUST COMPANY, as Trustee, *vs.* TEXAS CENTRAL RAILWAY COMPANY *et als.*	In Equity. No. 33. Cross-bill.

The following testimony taken before Abner S. Lathrop, special master in chancery, at Houston, Texas, on the 4th day of November A. D. 1895:

Mr. CHARLES DILLINGHAM, being duly sworn, testified as follows:

44 *Testimony of Chas. Dillingham.*

Q. When was the South Texas National Bank of Houston organized?
A. My recollection is that it was in 1890, in July.
Q. Who were the promoters or originators of the bank?
A. M. T. Jones, J. E. McAshan, O. T. Holt, Henry Brashear, myself and Mr. Rule of Kansas City.
Q. What was the capital stock of that company?
A. Five hundred thousand dollars.
Q. Was it all paid in?
A. Yes, sir.
Q. And the bank began active business in July, 1890?
A. Yes, sir; I think it was 1890.
Q. Who was elected president?
A. M. T. Jones.
Q. Has he been president continuously since?
A. Yes, sir.
Q. Who was elected vice-president?
A. I was elected first vice-president.
Q. And have you continued in that position continuously?
A. Yes, sir.
Q. Who was elected second vice-president?
A. Mr. Henry Brashear, I think.
Q. Has he held it continuously since that time?
A. Yes. I believe he was not the first second vice-president. I

am not sure but Mr. Sanborn was elected first and he resigned and Mr. Brashear was elected.

Q. What amount of stock did you hold in the bank?

A. You mean originally?

A. Yes.

A. Ten thousand dollars.

Q. How much have you held ever since?

A. I have purchased more from time to time.

Q. How much do you hold?

A. I cannot tell exactly, somewhere in the neighborhood of thirty thousand dollars.

Q. You have held all of the ten thousand?

A. Yes, sir.

Q. And how long afterwards was it that you purchased more?

45 A. That I cannot tell exactly—I purchased from time to time from that time up to within a year probably.

Q. Where were you depositing the funds of the Texas Central Railway Company prior to the organization of this bank?

A. The Texas Central did not have much of any funds to deposit prior to that time, or at that time either; my recollection is—I was the receiver of the Texas Central you know—and the funds were divided between T. W. House, the Commercial national, and then when the South Texas was formed that was made the depository.

Q. That was made the depository for both roads?

A. I do not know whether it was or not.

Q. Is it not a fact that the other roads made their deposits in other banks—the funds of the other road was kept in the other banks?

A. You mean of the Houston & Texas Central railway?

Q. Yes.

A. Kept in all the banks.

Q. Some was kept in yours?

A. Yes. It was divided up.

Q. How much of the Houston & Texas Central funds was kept in your bank?

A. I cannot tell you; I suppose there was—the First national I think was the largest depository and House and the South Texas had the next amount, and the Commercial had less. Major Cave was my treasurer, and kept the distribution just about as he pleased, and sometimes one was larger and sometimes another.

Q. Did you ever receive any salary or compensation of any character from the South Texas national bank?

A. When the bank was formed the salary of the cashier was fixed, but the salary of the president and vice-president was not fixed until the following January at the annual meeting, when the salary of the president and first vice-president was fixed by the board, and that of the vice-president was fixed at one thousand dollars per year, which I have received from that time to this and am now receiving.

Q. Are you receiving that salary?

A. Yes, sir.

46 Q. What services, if any, did you perform to the bank for that money?

A. It is hard to say—I am there every day and have always been when in town; would go at eleven o'clock and stay until one, and participate in all of the loans, discounts and general policy of the bank—use my influence to get business and deposits for them and get business and make myself generally useful, I believe.

Q. When this question arose in the directory as to giving you this salary, was not the matter based on the fact that you had the funds of these roads in there?

A. I do not think so.

Q. Were you present?

A. I was not present.

Q. Do you not know it to be a fact that Henry Brashear always voted against your compensation and stated that it was based upon the fact that you had money in there belonging to the railroads?

A. Most positively no, sir.

Q. And that he would not vote for it but was always opposed to it and voted against it?

A. Henry Brashear at one meeting after the first meeting at which I was not present, the question of fixing the salaries came up and Henry Brashear wanted to cut the salaries down—wanted the president and vice-president to have nothing—but he never made any such suggestion as you state.

Q. Not on that account?

A. Never. Did not want the president or vice-president to have a salary and voted against both—it never was in my presence or knowledge that any intimation was made that the salary was based on that.

Q. Was it not rumored around town and talked on the streets sometimes? Was it not generally rumored and talked on the streets sometimes that was the case?

A. I never heard of it.

Q. That they did give you this $1,000.00 for that reason?

A. I never heard of such a thing in my life.

Q. You never heard of the rumor at all?

A. No, sir.

47 Q. How much of the funds of the Houston & Texas Central railway did you have on deposit there?

A. I had as high as—well I cannot answer that question intelligently.

Q. You cannot answer that?

A. No, sir; I would not be able to answer it intelligently.

Q. You are familiar with the workings of the bank and were, were you not.

A. Yes, sir.

Q. From the time of its organization?

A. Yes, sir.

Q. Did it do a good business?

A. Yes, sir.
Q. It did a good business?
A. Yes, sir.
Q. What was money being loaned at here?
A. About eight per cent.
Q. That is the usual rate here?
A. Yes, sir.
Q. What was the policy of the bank with reference to making loans—I mean this—what proportion of the funds were usually kept loaned out?
A. Well, I think the policy of the bank has been to keep a large cash balance on hand, larger than any other bank in the State except with the possible exception of the First national bank here—they have always had a very large amount of cash on hand.
Q. What do you mean by large?
A. In proportion to their deposit.
Q. What proportion would that be?
A. I cannot tell exactly—the railroad money that was deposited there of course was absolutely valueless as a deposit.
Q. Have you any of these periodical statements that have been made for publication?
A. No.

(Statement dated May second, 1895, produced by Judge Clark.)

Q. Were these published that way periodically?
A. Yes, sir.
Q. Are they accessible?
48 A. Yes, sir; the bank has a file of them I think—it may not be full, but I think it is.
Q. How often are they published?
A. Probably twice a year and whenever the comptroller calls for one it is published. This is dated May 2d, and is one that the comptroller called for. One is published on the first of July and one on the first of January.
Q. What is the dividend time of this bank?
A. January 1st and July 1st of each year.
Q. Has this bank paid any dividends?
A. It has paid three per cent. semi-annually regularly.
Q. You received this on your——
A. On my stock.
Q. On your stock along with the others?
A. Oh, yes.
Q. Are you willing to produce the stock book or get a correct statement as to the amount of stock that you had continuously so that it can go down in the record?
A. Yes, sir; Mr. McAshen will do that.
Q. I see here when this statement was made that you had $745,000 loaned out?
A. You mean the bank had?
A. Yes, sir; that the bank had $745,966 loaned out on a capital

stock of $500,000—was that about the proportion that was usually, that you usually had out?

A. Yes, sir; in the neighborhood of $750,000.00 sometimes $800,000.00 and $850,000.00.

Q. You had deposits at that time to the amount of $495,000.00?

A. Yes, sir.

Q. You can state then that an amount in excess of the deposits as shown was at all times loaned out?

A. An amount in excess of the deposits?

A. Yes; has been at all times loaned out by the bank.

A. I presume so. A bank of $500,000.00 would have small deposits.

Q. It would be likely to loan more than its own entire deposits? It would be loaning its own funds of course and all its deposits?

A. It loans its own funds, all of them, and some of the deposits would be a better way to put it. That is the banking way.

49 Q. The funds are not kept separate?

A. No, sir.

Q. You are speaking of the funds of the Houston and Texas Central and the Texas Central railways. They were not what you would call special deposits were they?

A. No, sir.

Q. General deposits?

A. Yes, sir.

Q. Went into the general funds?

A. Yes, sir.

Q. And were used like any other ordinary depositor's money?

A. Yes, sir. Except that every bank officer I believe knows its depositors and whether it is a permanent deposit or not—that is, whether it is likely to be drawn out quickly or not, and whether it is a good fund. The commercial man generally keeps his deposit pretty even and don't draw down below a certain amount but railways are likely to draw out all at once, for instance in paying off salaries and the banks have to look out to have that amount ready for them. They may at any time draw out the most of their deposit.

Q. That is when a railroad is in operation?

A. Yes, sir.

Q. In regard to this compensation which is charged at $150.00 per month, I will ask you to state if you remember when you ceased to act as receiver for the road—that is, when you turned the road over.

A. I think in September, 1891, the road was turned over.

Q. September 25th, 1891?

A. Very likely; I can not tell the exact date.

Q. I will ask you to state if the vouchers that are shown here as exhibits to your various monthly reports made to Col. Winter are accessible and get-at-able.

A. Yes, sir. They are in the auditor's office.

Q. Do you know whether Mr. Kidd is in town?

A. I think so; he was a day or two ago.

Q. State what services you performed.

A. When the railroad was turned over to the trustees there was left in my hands a large amount of lands, town lots, notes
50 that had been given for lands and town lots that had been sold; the lands and town lots for sale and the notes for collection; and I had general charge of the collection of those notes, the disposition of the lands and lots and looking after the property left in the hands of the receiver.

Q. You had some fund left?

A. Yes, sir.

Q. About $40,000.00?

A. Yes, sir.

Q. At first you had about $70,000.00; there was part of that amount turned over?

A. I do not think so; if there was there was a good many debts to pay. I cannot remember these figures for four or five years.

Q. On October 1st, 1891, your report shows on hand $71,298.47, but during that ensuing quarter up to January 1st, 1892, you seem to have paid out considerable amounts for closing the debts of the receivership, I suppose?

A. Yes, sir.

Q. On hand January, 1890, your report shows $40,000.

A. I suppose that is absolutely correct. After the road was turned over it seems there was many unsettled accounts that had to be paid.

Q. From the time the road was turned over you charged and took out of this $40,000 the $150 per month?

A. I charged $150 per month and I turned over at the end of this four years $40,000; forty-odd thousand dollars.

Q. You charged $150 per month from the time the road was turned over to the purchasers down to April 4th, 1895?

A. That is right.

Q. And you took that out of the funds?

A. They were in my hands and came in my hands from closing collections during that time.

Q. Do you remember about how much money you collected during that period from notes?

A. No, sir.

Q. Is it not a fact that you did not collect to exceed $20,000—is it not a fact that it did not reach $15,000?

51 A. I cannot answer that question intelligently at all.

Q. You had on hand January 1st, 1892, some forty-odd thousand dollars, and it seems you turned over some forty-one thousand dollars?

A. Yes, sir.

Q. Whatever you had collected in the meantime you had either paid out or appropriated towards your compensation that you claimed?

A. Yes, sir.

Q. Didn't you in the meantime pay Mr. Kidd considerable compensation?

A. I paid him $600 under an agreement with him to keep the books and vouchers and to take care of this work and make statements from that time until the close of the receivership business.

Q. You took that out of the funds?

A. Yes, sir.

Q. State what different services you in person actually performed with reference to collecting these notes.

A. Most of them were collected through the attorneys. I did not perform any service, but as I said before I had charge of the whole business as receiver. I had to do the business through agents. I was under bond. If you say manual labor I did not do any.

Q. Is it not a fact that Mr. Kidd did the principal part of all of the corresponding?

A. No, sir, the lawyers—I think yourself included—were continually calling for statements. There was a contest over these funds I think and we made a good many statements and answered inquiries not only of yourself but of Farrar, Jonas & Kruttschnitt.

Q. You will remember that I only called for one statement.

A. Well I think you were not as persistent as the others were.

Q. I will admit that I called for one statement and got it from you.

A. There was a good deal, not so much work as there was annoyance.

Q. For that service you took out of the fund what will aggregate $6,000.

A. I charged what the court allowed me—$150.00 per month.

52 Q. When you were acting as receiver of the railroad proper and operating it you had quite a number of persons on the pay-roll did not you?

A. Yes, sir.

Q. You were ordered by the court to discontinue the pay-roll; *di* did you discontinue it voluntarily?

A. I don't think I was ordered to. I was ordered to turn the railroad property over and I had no further use for the railroad employees.

Q. And you discontinues all of them except your own compensation?

A. Yes, sir.

Q. And that went on?

A. Yes, sir.

Q. During the whole of this time that you had this fund in the bank did you make any effort to loan this money? Did you make any effort to loan this money or realize any profits from this fund for the benefit of the owners of the funds?

A. No, sir.

Q. And you did not in fact loan it out and realize anything on it?

A. No, sir.

Q. You allowed it to remain in the bank there until a motion was made on the part of the purchasing trustee that it be turned over to the court?

A. I do not know who made the motion, but the court ordered me to turn it over.

Q. The court ordered you to turn it over in April, 1895?

A. Yes, sir.

Q. This fund remained there constantly without any effort on your part to realize any interest for the owners of the fund?

A. Yes, sir. If that needed explanation I might say that I was notified by the attorneys four or five times a year that they were going to get an order to turn it over and end the thing.

Q. Who notified you?

A. Mr. Kruttschnitt.

Q. He was acting as your attorney?

Q. He was acting as attorney for the receiver.

53 Q. He was acting as your attorney?

A. Yes; and for the Morgan Company also who are intervenors or parties to the suit.

Q. He was your attorney was he not?

A. Yes, sir.

Q. And when this motion was made—or when this effort was made on the part of the purchasing trustees to get the $1,000 per year and the $150.00 per month that you claimed, he ceased to act as your attorney?

A. When you filed this.

Q. Yes—he declined to act?

A. No; but I thought it was better to have an attorney in this State. Mr. Kruttschnitt was also acting, as I said, for the other parties.

Q. He represented the Morgan people as well as the receiver?

A. Yes.

Q. He is of the firm of Farrar, Jonas & Kruttschnitt?

A. Yes.

Q. They were general attorneys for the receivership?

A. Yes.

Q. During the whole time of the receivership?

A. Yes.

Q. Did any one else notify you?

A. I frequently spoke to Mr. Mott, who acted for the Farmers' Loan and Trust Company, and asked him to close it up and he said they were writing to New York and gave various causes, but said they were expecting to close the matter up and get rid of the property. I do not know but I also spoke to you about it.

Q. I do not remember. I did not have anything to do with it until they employed me in the matter to represent them in these various matters.

A. Mr. McHarg wrote me *me* at one time a letter which referred to Mr. Winter's report, and I would like to have that letter put in evidence.

Q. If Mr. Winter has it we can get it?

(Judge CLARK:) His report shows that he filed it.

(Judge LATHROP:) What letter is that?

A. Letter from Mr. McHarg to Mr. Dillingham.

Q. Mr. Dillingham, did you file the letter?

A. I filed it with Mr. Winter—this matter was up before
54 him and in his report he says he has filed it with the court and I would like to have the letter go in.

Q. You received in September, 1891, from these same people that are objecting here $20,000 didn't you as compensation as receiver?

A. I received from the Farmers' Loan and Trust Company I think.

Q. No, it is the purchasing trustees?

A. The question of compensation came up and the compensation of the receivers and the lawyers and master came up and it was referred to a special master and before the hearing the Farmers' Loan and Trust Company I suppose it was—it was through their attorneys—came in and made a proposition to us all to pay us a lump sum, which was accepted and mine was $20,000.

Q. What particular individuals effected that?

A. Major Mott was the attorney for the Farmers' Loan and Trust Company.

Q. Attorney for these people, whoever it was that was paying it?

A. Yes. It was all in the name of the Farmers' Loan and Trust Company, Dennison, McClure & Ross acting in New York.

Q. How much compensation did you receive before that?

A. One hundred and fifty dollars per month.

Q. As receiver?

A. Yes.

Q. And in addition to that you received compensation for making sale of the road?

A. Not at that time.

Q. Subsequent to that?

A. Yes.

Q. What was that?

A. Three thousand dollars. That was before the master, and that was the allowance.

Q. That was before John Dyer?

A. Yes, sir.

Q. That $150.00 per month began with the opening of the receivership?

A. Very soon after that.

Q. The compensation dated back?

A. Yes, sir.

55 Q. It was the 4th of April, 1885?

A. Yes, sir; that is the time it went into the hands of the receiver.

Cross-examination:

Q. I understand you to say Col. Dillingham that you were one of the original promoters of the South Texas National Bank of Houston, and that it was organized in 1890, or about that time?

A. Yes, sir.

Q. About what time of the year was it organized?
A. In July.
Q. Were you offered any position at the time of its organization?
A. Well, I think they offered me the presidency and talked about it and asked me if I would accept it.
Q. Did you agree to accept or decline it?
A. I declined it.
Q. You were then elected vice-president?
A. Yes, sir.
Q. There was no compensation fixed for the president or vice-president at that time?
A. No, sir.
Q. When was it fixed?
A. At the annual meeting in the following January.
Q. Your salary as vice-president was fixed at $1,000?
A. Yes, sir.
Q. Which you have drawn ever since?
A. Ever since.
Q. At that time about how much money was on deposit belonging to the Texas Central railway in the South Texas national bank, approximately, we cannot expect you to be accurate?
A. There was very little—there might have been ten or twelve thousand dollars.
Q. What time was that?
A. The time of my election as vice-president.
Q. How were the deposits of the Houston & Texas Central railway and the Texas Central railway regulated and by whom?
A. Well I designated the banks in which deposits were to be made and Major Cave, who was my treasurer, fixed the amounts.
56 Q. He disbursed it?
A. He disbursed it as in his judgment was best.
Q. Did you ever interfere with his disposition or attempt to interfere with it?
A. No, sir.
Q. You simply indicated the general policy in the matter of deposits of funds of the road among the different banks of the city?
A. That was it.
Q. Did you ever make any agreement or have any understanding directly or indirectly with any bank in Houston, including the South Texas national bank that any interest was to be paid on any of these deposits?
A. Never [illegible] the world, not the slightest intimation from any bank officer that they would pay interest, nor from me that I wanted it.
Q. Did you ever ask for it?
A. No, sir.
Q. Did the South Texas national bank ever pay interest on the deposit made by the Houston & Texas Central Railway Company or the Texas Central Railway Company?
A. Not one penny.
Q. Is it not a fact that from the organization of the South Texas

national bank it has been the settled policy of the bank to pay no interest to anybody?

A. That is the fact.

Q. Is it not a fact that it always was advertised so and has always so advertised?

A. That is a fact.

Q. This is a report of the condition of the South Texas national bank on May 7th, 1895?

A. Yes, sir.

Q. Is that advertisement on there similar to the one on them usually?

A. Yes; it is in red ink, and I think you will find it on most all of them.

Q. Were there any issued without it?

A. There may have been some statements that it was not put on, but that is the policy of the bank and is usually shown there.

Q. You were asked if you ever used this balance on
57 deposit of about forty thousand dollars in the South Texas national bank so as to increase it in the interest of the owners, to which you replied that you had not?

A. Yes, sir.

Q. Will you please state fully why you did not?

A. First of all I had no authority to do such a thing, I did not think it would be proper for a receiver to use the money of the trust to accumulate interest without an order to that effect and I should not like to put it in a bank that paid interest. I do not think that a country bank can afford to pay interest on a deposit that is subject to check out at any time.

Q. Is it not a fact that when a bank pays interest on a deposit it subjects itself to suspicion in banking circles?

A. Yes, if it is in the country. In New York where they can loan money on call and go out and collect it in an hour it is different but where you have to loan money on time you cannot call it in in a minute.

Q. It is alleged by Charles Moran and Henry McHarg, the contestants in this matter that you have had and held in your hands funds belonging to the Texas Central Railway Company aggregating over $40,000.00 which you have been using and collecting interest thereon and which you have appropriated to your own use and benefit and have not accounted to the court for the revenues arising therefrom. Is that true or false?

A. Absolutely false.

Q. You are also charged in this bill with making quarterly accounts under oath to the master in chancery falsely and deceitfully and with the intent to defraud Messrs. Moran, Gould and McHarg and secretly withheld from the master in chancery the accumulation of interest that you received thereon. Is that true or false?

A. False.

Q. You are charged with filing false affidavits and false reports, and thereby perpetrating a fraud upon the rights of these parties and of withholding all knowledge thereof from the master in chan-

cery, and thereby procuring confirmation in his report. Is that true or false?

A. Absolutely false.

Q. It is charged that you received interest on money from
58 the South Texas national bank, $1,000 per annum, for the last six or eight years, which of right belongs to McIlarg, Gould and Moran. Is that true or false?

A. It is false.

Q. I will ask you to explain fully the matters and circumstances and details under which the sum of $20,000 was paid you by the Farmers' Loan and Trust Company for these parties here.

A. The litigation was about to be closed and the mortgaged property had been sold, and the question of compensation to the receiver and attorneys in the case came up, and the court ordered it referred to the master to report. The master had ordered a hearing or called for a hearing, but at that hearing the attorneys got together, and it was suggested that it might be fixed out of court, and there was negotiations between Baker, Botts, Baker on the one side and——

Q. Baker, Botts & Baker, representing whom?

A. Themselves and me. And Mott & Ballinger—Ballinger, Mott & Terry, Mott's firm who had been engaged in the litigation, and Farrar, Jonas & Kruttschnitt, and finally they arrived at a—the Farmers' Loan & Trust Company, a proposition to pay us all a lump sum.

Q. Each?

A. Each, and that proposition was accepted and they paid it.

Q. What was that $20,000 intended as compensation for by the parties who paid it, and by you who accepted it?

A. It was intended as compensation as receiver up to that time.

Q. Up to that time?

A. Yes, sir.

Q. Was anything said at that time as to further pay for the receiver?

A. No, sir.

Q. What time was this $20,000 paid in 1891?

A. I cannot tell; I understand Mr. Campbell has a report there that shows it.

(By Mr. CAMPBELL:) It shows September 24th, 1891?

A. Yes, sir.

(Judge CLARK:) That is about the time the fiscal property of the Texas Central railway was turned over to the trustees?

A. About the time.

59 (By Mr. CAMPBELL:) It is eleven days before.

(Judge CLARK:) Was there any order of the court intimating your duties as receiver or relieving you of duties as receiver?

A. Not that I am aware of, except the general order to me to turn over the property.

Q. The physical property of the railroad to the purchasing trustees?

A. Yes, sir.

Q. The parties were McHarg, Gould and Charles Moran who bought the road at that sale under foreclosure?

A. Yes, sir.

Q. They did not buy the lands or other property of the Texas Central Railroad Company at that sale?

A. No, sir. They bought what was covered by the first mortgage. The town lots and some lands were not included.

Q. Did I understand you to say that you then continued acting as receiver?

A. I did; yes, sir.

Q. Administering the assets that were still in your hands?

A. Yes, sir.

Q. What was the amount of those assets? I do not mean the money—the amount of the assets that were in your hands in process of administration from 1891 to 1895?

A. I cannot tell you definitely.

Q. I do not ask you that.

A. There was a good many town lots on the line of the road and lands and notes that were given for lands—the property of the company that was not covered by the mortgages.

Q. Cannot you give an approximate estimate—we don't ask you to be strictly accurate—including town lots, lands, money, etc., in your hands subject to your administration as receiver after you turned the other property over to the purchasers?

A. Do you mean the money value?

Q. Yes—the property in your hands for administration?

A. No, sir; I never figured it up. I never figured it up
60 to see what it would amount to. It was quite a large sum though.

Q. Approximately how much?

A. Well, it would be almost impossible for me to give an estimate. I believe they called the town lots and lands worth somewhere from fifty to one hundred thousand dollars and there are the notes—probably $30,000.00, good, bad and indifferent.

Q. And then you had $40,000.00 in money?

A. Yes, sir. There was something over one hundred thousand dollars altogether—considerable over.

(By Mr. CAMPBELL:)

Q. How much was that which you approximated it?

A. Considerable over one hundred thousand dollars. The lots were an unknown quantity.

Q. But they certainly had a nominal value?

A. Yes, sir.

Q. You proceeded to administer these assets as receiver?

A. Yes, sir.

Q. To make collections?

A. Yes, sir.

Q. And so forth?

A. Yes, sir.

Q. Make sales of lots wherever you could?

—. ——.

Q. While this was going on from September, 1891, to 1895, I believe it continued—were you ever called to account or asked to close your receivership by McHarg, Moran and Gould?

A. No, sir, except this letter which I have heretofore referred to. Mr. McHarg asked me in that letter to confer with Mott and see if some plan could not be devised by which it could be closed up.

Q. Is it not a fact that that letter was dated—that letter from McHarg was dated March 12th, 1894?

A. I cannot say positively. The master's report there probably will show.

Q. That is the statement of the master—March 12th, 1894?

A. I believe so.

Q. This letter requests you to confer with Mott, M. F. Mott?

A. Yes, sir.

61 Q. Did you do so?

A. I did.

Q. In relation to closing up the receivership?

A. Yes, sir.

Q. What did Mott reply?

A. My recollection is that he said there were some legal questions involved—at least he gave that as the reason why he did not wish the receivership closed—that they were endeavoring, however, to reach a conclusion, and would have it closed as soon as possible.

Q. Do you recall anything said by McHarg in that letter showing that he was cognizant of your previous account filed by you in which you claimed this $150.00 salary?

A. It is so long since I have seen the letter, but it is my recollection that he started out by saying that he was surprised that the receivership was not closed—that the matters were not closed and his understanding was that nobody was to receive any pay except the receiver, and I had charged for Mr. Kidd's services and he wished me to confer with Mr. Mott and have the thing closed up as soon as possible.

Q. He expressed the understanding in that letter that the receiver was to have compensation?

A. Yes, sir.

Q. For his services?

A. He put it in a negative was—that nobody was to be paid except the receiver.

Q. That is tantamount?

A. Yes, sir.

Q. The special master, Winter, gives the contents of the letter in his report?

A. Yes, sir.

Q. Was there any understanding or agreement or stipulation when the twenty thousand dollars was paid as to how it was to be treated—if it was to be in full for all services rendered and to be rendered in the future?

A. No stipulation that it was for services to be rendered.

Q. It did not cover services to be rendered?

A. No, sir.

Q. Is it not a fact that the understanding was to the con-
62 trary—that you were to be compensated for matters with reference to the receivership thereafter and that you were to continue to draw the $150.00 per month until the receivership closed finally.

A. I do not know that the question was discussed. I think at that time it was supposed the thing was to be closed up at once.

Q. Did you give a bond in the case?

A. Yes, sir.

Q. In what amount?

A. Twenty-five thousand dollars.

Q. Have you ever been finally discharged?

A. No, sir.

Q. You held these assets until last April?

A. Yes, sir. That is a portion of them—the lands were taken the year before and sold or nominally sold.

Q. The money was turned over last April?

A. Yes, sir.

Q. April, 1895?

A. Yes, sir.

Q. The notes—what did you do with them?

A. Turned them over.

Redirect examination:

Q. This agreement was entered into on the part of the attorneys, Farrar, Jonas & Kruttschnitt, and Baker, Botts and Baker & Ballinger, Mott and Terry and Willie, Mott & Ballinger, all at the same time, in September, 1891, September 9th, 1891?

A. Yes, sir.

Q. The amounts were then and there agreed on as to what was due the receiver and these various attorneys who had been representing the principal litigants in this matter?

A. That is my recollection.

Q. Was it receipted for in this language "In full of all my services as receiver of the Texas Central railway"?

A. I cannot tell.

Q. Is it not recited in the receipt of Farrar, Jonas & Kruttschnitt "In full of all fees and charges due us in the matter of the Texas Central Railway Company in litigation affecting said property"?

Do you know whether that was receipted so or not for $5,000.00?

63 A. I do not know about that.

Q. Baker, Botts and Baker gave a receipt in full for all their fees and charges in said receivership.

A. I know I have paid them since that day out of my own pocket for services done to me.

Q. And in Ballinger, Mott & Terry the same language as in Baker, Botts & Baker's receipts?

A. I cannot say.

Q. And Willie, Mott & Terry the same, the receipts running all the way from five to ten thousand dollars? Benjamin G. Clarke did not he participate in that settlement? He had formerly been represented?

A. Yes, sir.

Q. Is it not receipted in his name in full of all my services as receiver of the Texas Central railway?

A. I do not know.

Q. Is it not an unusual thing to pay the vice-president of a bank any salary at all?

A. I do not think so.

Q. Do any in this town draw a salary?

A. I think so.

Q. What?

A. The First national.

Q. Who is vice-president of that?

A. Mr. Palmer; and in the Commercial I do not know about it now, but they formerly paid the vice-president more than the president, or as much.

Recross-examination:

Q. Is it not a fact that Clark was merely a nominal receiver, and that you were assisting to administer it?

A. Yes; he had no active management—he died two or three years ago.

—. ——.

A. He quit it altogether before he died.

Q. I will ask you if this receipting in full of my fees in charge as receiver of the Texas Central Railway Company as per agreement.

A. I do not remember anything about the terms of the receipt.

Mr. J. E. McAshen, being duly sworn, testified as follows:

64 *Testimony of Mr. McAshen.*

Q. What business are you in?

A. Bank cashier.

Q. What bank?

A. South Texas National Bank of Houston, Texas.

Q. How long have you held that position?

A. Since it was organized, in July, 1890.

Q. Are you acquainted with Col. Dillingham?

A. Yes, sir.

Q. He is the vice-president of that bank?

A. Yes, sir.

Q. Do you have in your possession the various monthly or periodical statements?

A. Yes, sir; I have duplicates of what we send to the comptroller, of course they cannot go out of our possession. I have files of the printed statements.

Q. How many are there?

A. Five each year.

Q. Covering a period of——

A. Five years and a little over, making a total of twenty-odd.

Q. Let us see them, the published statements.

A. Here is one dated October 2nd, 1894, one of May 7th, 1895, February 28, 1894, January 5th, 1893, I suppose they all bear on the same matters. And these others are duplicates of what we render to the comptroller and are part of the bank records. I cannot let these go out of my possession, but I can let you see them.

Q. How many are there missing for these five years?

A. About twenty-three missing.

Q. Have you them in chronological order?

A. Yes, sir.

Q. State what they are?

A. January statement is a statement to stockholders and the others are copies of call statements.

Q. Take for the year 1890 and get such statement as you made for that year.

A. There are three of them, I do not suppose these bear on the question at all.

Q. What does this first statement show that you had loaned out at the time the first statement was made?

A. The first statement shows $172,000 loaned out.

65 Q. When was that statement made?

A. July 18th, 1890.

Q. How much was your capital stock?

A. Five hundred thousand dollars.

Q. Was it paid in?

A. Yes, that is there was paid in $498,800 paid in on that date and there was $2,000 not paid in.

Q. That is at the beginning?

A. Yes, that is the first statement.

Q. How much money did you have on deposit at that time?

A. We had on deposit, all told, $112,000.

Q. That is all for that one—give me one of the others—the last one made that year—it is not necessary to give them all.

A. Yes, sir.

Q. Give me the amount that was loaned out.

A. The amount that was loaned out at that time was $774,145.70.

Q. What is the date of that statement?

A. December 19, 1890.

Q. Of course the capital stock was the same?

A. No, the capital stock was all paid in at that time.

Q. Now the deposits.

A. December 19, 1890, the deposits at that time were, individual deposits, subject to check, $394,840.73, certified checks $2,100, due on other banks $42,000.

Q. That covers all that would be cared for, for the year 1890?

A. Yes, sir.

Q. Take the year 1891, and give me the first statement.

A. It was issued February 26, 1891—that is the first for that year.

Q. You need not bother with that one—give me one further removed—give me the next one to it.

A. May 4, 1891, do you wish to know the same facts?

Q. Yes, sir.

A. Loaned, $772,864.73; overdrafts, $4,210.84; individual deposits subject to check, $366,000; due other banks, $42,000.

Q. Give me the one for 1892.

A. Any particular one?

66 Q. No—any one you happen to stumble on.

A. There is March 1st, 1892—which is a year after.

Q. That will do.

A. Loans, $728,766.64; overdrafts, $3,376; individual accounts, $452,000; due other banks, $61,000.

Q. What is the date of that?

A. March 1st, 1892.

Q. Give me one in 1893; that will be about a year from that?

A. There is March 6th, 1893.

Q. That will do.

A. That is just preceding the panic. Loans and discounts, $848,856.89; overdrafts, $92; individual accounts, $701,000; bank deposits, $100,000; a total of $801,000 in round figures.

Q. That is in 1893?

A. Yes, sir; just before the panic. They fell off after that.

Q. Give me one about a year after that.

A. There is one February 28th, 1894.

Q. That will do.

A. Loans and discounts, $671,000; overdrafts, $1,600; individual accounts, $320,000; bank deposits, $52,000.

Q. You can give me one between January and April, 1895.

A. Yes, sir—I have such a one—March 5th, 1895, or May 7th, 1895.

Q. Give me March 5th, 1895.

A. Loans, $710,000; overdrafts, $800; individual deposits, $452,000; bank deposits, $44,000; cashier's checks, $10,000; United States deposits, $50,000.

Q. Are you willing for these to be considered in evidence?

(Judge CLARK:) Yes, sir, with any explanation- that are necessary. I want them to go in evidence as continuous statements.

(MCASHEN:) The full detail of it is not given.

(Mr. CAMPBELL:) We do not ask for that.

A. There is only one item of deposit given in this statement.

Q. From your standpoint and of the bank what is the difference between individual and bank deposits?

67 A. The bank deposit is the balance due other banks, and the individual deposit is due to some corporation or private person.

Q. The whole fund goes in as deposits?

A. Yes, sir; we are required in rendering our statements to render them separate and keep them separate on our books—the bank deposits on a separate ledger from the others.

Q. They are all subject to check?

A. Yes, sir.

Q. And are put in the general fund and used by the bank?

A. Yes; in making out our statements we are required to report what percentage we reserve or keep on deposit and bank balances.

Q. Judging from your knowledge of the banking business, and from the statements that you have before you, about what amount of money did the bank at that time have on hand, and average for the five years since its organization?

A. The average amount?

Q. What you have loaned.

A. I have not figured it out.

Q. Would this be about an average?

A. I think an average would be about $800,000.00 in round figures.

Q. At what figure do you loan—on what percentage?

A. We loan on different rates, not below eight per cent. and not above ten since the new usury law was passed.

Q. That was in 1891 I believe?

A. I do not remember—at any rate we have conformed to it since that time.

Q. Since the lifetime of your bank you have not loaned to exceed ten per cent.?

A. I believe one-half or three-fifths of our loans have been made at eight per cent.

Q. What dividend does this bank declare?

A. Six per cent. annually; three per cent. semi-annually.

Q. That is over and above all expenses?

A. Yes, sir; over and above the amount credited to sur-
68 plus.

Q. What surplus do you carry?

A. At present $65,000 I think it is. I can tell you in a minute. The $65,000 is our present surplus and of course there is an amount of undivided profits in addition to that.

Q. What is the undivided profits, you make a difference between surplus then?

A. Yes; the surplus is assets according to the national banking act and is permanent and subject to distribution at any time.

Q. What is the amount required to be?

A. The surplus?

Q. Yes.

A. We are required to put by at least ten per cent. of our profits at the end of each six months to the surplus.

Q. Have you done that?

A. Yes, and more.

Q. What is it now?

A. Surplus is $65,000.

Q. That is the accumulation during the life of the bank?

A. Yes; to the funds of the bank.

Q. How much of that has accumulated?

A. I do not know just exactly.

Q. Is not that undivided now?

A. Yes; the last statement showed that there was $25,000 net. I have not got the figures for today, but I can tell you approximately. It is a little more than that, the last statement showed $25,000.

Q. That would make the surplus and profits——

A. $95,000; of course out of that have to be paid losses and profits and anything else that can be properly chargeable to depreciation of bonds, etc.

Q. During all this time until last spring the funds of the Texas Central Railway Company have been on deposit in your bank, that $40,000.

A. There was an account with the Texas Central with us until last spring.

Q. When did the Texas Central railway open an account with you?

A. In 1890.

Q. That was the beginning?

A. Yes; the account was small until some deposit they
69 made in 1891, the latter part of 1891; I think in September when the account increased pretty largely and was very largely drawn against, but there was a balance remaining of some $30,000—some thirty-odd thousand dollars.

Q. Did it ever go below forty?

A. Yes, sir.

Q. When since September 14?

A. It went below $40,000 during the disbursement; I don't remember when, but it was afterwards made up, that is, as I understand it, there was some traffic deal with one of the other roads which was afterward settled and made it $40,000, or perhaps a little more; I do not remember the exact figures.

Q. You know it went below $40,000?

A. Yes, sir.

Q. Down to $30,000?

A. No, sir; but between thirty five and forty, perhaps thirty-eight or thirty-nine thousand dollars.

Q. Has Mr. Charles Dillingham been acting as first vice-president of the bank?

A. Yes, sir; ever since its organization.

Q. Do you remember about the fixing of his salary?

A. Yes, sir.

Q. Were you one of the directors at that time?

A. Yes, sir.

Q. Was there any discussion about giving him it?

A. Yes, sir.

Q. What was the reason for giving it to him?

A. The directory thought he was a valuable director.

Q. They did not give any other director anything except Col. Jones?

A. And myself.

Q. Gave all your time to it?
A. Yes, sir.
Q. You gave all your time to the bank?
A. Yes, sir.
Q. About how much of the time did Mr. Dillingham devote to it?
A. When he is in town some part of every day as a rule—of course when he is away from town he cannot be at the bank. During his absence of course he is not there.

70 Q. You are familiar with the stock book of the bank?
A. Yes, sir; I have a memorandum of part of it.

Q. How much stock has Mr. Dillingham had.
A. He began with one hundred shares.
Q. That was ten thousand dollars?
A. Yes, sir.
Q. He has bought how much since?
A. To the amount of 286 shares, and he has never sold but ten shares, which gives him $26,500.00 in the bank now.
Q. How long has he had it?
A. One hundred shares began with the opening of the bank July 14, 1890. On July 17, 1890, he bought five shares—July 23, 1890, ten shares—October 14th, 1891, fifty-one—November 14, 1891, twenty shares—November 18, 1892, seven shares—January 3d, 1892, ten shares—May 22nd, 1892, twenty shares, and October 30th, 1893, sixty-five shares—making a total of two hundred and eighty-six shares, of which he has never transferred but ten shares.
Q. And he holds $27,000.00?
A. $27,600.00 now.
Q. You said something about interest?
A. Our bank has never paid interest to any person—we advertise that.
A. And never have paid interest directly or indirectly.

Cross-examination:

Q. Was this deposit by the Texas Central railway permanent?
A. We looked upon it as entire transient—we thought at the time that large deposit was made—it was in the fall of the year and we expected to use it for New York exchange. It was made in a New York check and I expected it to be drawn on that day and made my arrangements to cover it.
Q. As a matter of fact it was held subject to check?
A. As a matter of fact it was held subject to check, and I remember Mr. Dillingham said to me on several occasions that the Texas Central money might be called for at any moment and we never took any liberty with it—we never have taken any liberties with

71 it nor with any railroad money we have had for the reason that the amounts are subject to fluctuations. I have seen the time when some railroads would withdraw very largely in a single day without notice.

Q. In the business of loans and discounts, especially loans, was that deposit of much value to the bank?

A. Not a bit—we never could take any advantage of it—the only advantage was, it made a good showing when we were called on for a statement and that was about all the advantage.

Q. At the time the board of directors fixed Mr. Dillingham's compensation as vice-president was it fixed with any reference to the Texas Central deposit?

A. None whatever.

Q. Or the Houston & Texas Central?

A. None whatever. That is, none to my knowledge.

Q. Was the question of interest on his deposit brought up?

A. No, nor anything in lieu of interest was never discussed.

Q. Did your bank ever pay interest?

A. None at all except in rediscounting paper for borrowed money.

Q. Does your bank ever pay interest on deposits?

A. Not a cent.

Q. Did your bank ever pay interest directly or indirectly on the deposit of the Texas Central or Houston and Texas Central railways?

A. None.

Q. It made it a rule never to pay interest?

A. It never paid interest on any deposit and we have so stated in our reports to the comptroller which are rendered under oath and we have made twenty-eight of them and so they show in the statement on each one.

Q. Under oath?

A. Yes, sir.

Q. Any interest due on them?

A. No; I will select one at random, or any one you like.

Redirect examination:

Q. Would you object to my looking at them?

A. No.

72 Cross-examination:

Q. Here is the reserve forty per cent. of the banks.

Q. Any interest paid on bank deposits?

A. None.

Q. On bills payable?

A. None.

Q. On notes and bills, &c.?

A. None.

Q. This statement appears on each one of these call statements since your organization?

A. Yes, sir.

Q. I suppose you have given me everything I want?

A. I do not know. All these statements have the same thing on them if you wish to see them.

Q. How long has Mr. Dillingham been drawing that salary?

A. Since January, 1891.

Redirect examination:

Q. Did Mr. Dillingham or any one in any manner suggest the payment of interest?
A. No, sir.
Q. Was the matter ever broached in the bank by him?
A. No, sir.
Q. How long has he been drawing that salary?
A. Since January 1st, 1891.
Q. Drawing it yet?
A. Yes, sir.
Q. Have you other funds in there belonging to the Houston & Texas Central? Is it on deposit in your bank now?
A. The Houston & Texas Central railway?
Q. Yes, sir.
A. Well, they keep an account there.
Q. Does Col. Dillingham as receiver?
A. There are no funds there subject to his check.
Q I mean Dillingham as receiver.
A. We have no funds in that account whatever.
Q. Have you ever had?
A. We have an account of the Houston & Texas Central railway under their reorganization.
73 Q. We don't want anything of that.
A. That is what I thought.
Q. I mean of Dillingham as receiver?
A. There are no funds to his account as receiver.
Q. Did he ever have any?
A. The Houston & Texas Central when he was receiver, kept an account with us. They kept an account with us and I believe with every bank in town.
Q. How long did they keep that account with you?
A. Until the close of the receivership, and when the receivership was closed it was transferred to the company.
Q. When was that?
A. I do not know. I think in 1893, in the spring of 1893, if I remember right, and the balance of it was transferred to the Houston & Texas Central account and has been left there since.

Recross-examination:

Q. Did your bank ever pay interest on the Texas Central deposit?
A. No, sir.
—. Did you ever pay Dillingham?
A. No. We have never paid interest to anybody. The bank has never been paying interest on any deposit.

Mr. HENRY BRASHEAR, being duly sworn, testified as follows:

Testimony of Mr. Brashear.

Q. Do you live here?
A. Yes, sir.

Q. What is your businesss?

A. I am in the banking business, I suppose you might call it now.

Q. You are one of the officers of the South Texas national bank?

A. Yes, one of the vice-presidents.

Q. Do you know anything about the fixing of the compensation of Mr. Dillingham as vice president?

A. Yes, sir; it was fixed as Mr. McAshen has stated.

74 Q. Was there any discussion there as to any interest to be paid?

A. No.

Q. In consideration of his having this money on deposit there?

A. Not a word said about it.

Mr. GEORGE KIDD, being duly sworn, testified as follows:

Testimony of Mr. Kidd.

Q. Have you the vouchers—did you bring the vouchers with you?

A. The summons was served on Mr. J. C. Kidd, and I understood the vouchers wanted were connected with the Houston & Texas Central railway. I do not think we have vouchers of the Texas Central railway. I think they are in the hands of the court at Waco.

Q. Can you indentify these and see—they are reports for the three quarters in 1891?

A. That is back of my time when I took hold of this thing. I cannot identify from this—would have to see the vouchers.

Q. Who had possession of the vouchers?

A. The auditor—he made the reports, and they were forwarded to the master in chancery at Waco. I think Col. Winter was master in chancery in 1891.

Q. Were they not returned here to Mr. Dillingham?

A. I do not think so. The Houston & Texas Central are and the Texas Central may be.

Q. Our understanding is that they were returned to Mr. Dillingham.

A. They were forwarded of course to be checked in the first place, but I am not positive whether they were returned here. I can find out in a very short time—it will not take long to discover.

Q. Can you find the vouchers for the——

A. If he sent them back to us they are in our possession.

Q. The vouchers that are referred to in 1891-'2 & '3 and 1894 and the final account in 1895?

A. Then you want all the vouchers?

Q. Commencing with September, 1891, do not go back of that.

75 A. You want the vouchers since 1891?

Q. Since September, 1891.

A. I will see.

Q. There are not very many—that is all I want.

A. My impression is that they are in the hands of the clerk at Waco.

Q. Look at this list and see if you think you can find them—I want something definite about it—they are referred to as A, B, C, D, receipts other disbursements E, F, G, H, I and J.

A. Those are schedules and referring to them we can find the vouchers.

Q. If those are in your office you can find them?

A. Yes, sir.

Q. If those vouchers are in your office you can take this data and see if you can find them and hand them to Judge Lathrop.

A. Yes, sir.

Mr. J. E. McAshen recalled testified:

Testimony of Mr. McAshen.

I wish to make a little statement—I stated that Mr. Dillingham owns 276 shares of stock. I find I made an error in that and that he owns 286 shares—that is the amount now standing to his credit.

Mr. George Kidd Continued.

Q. Did you ever receive any compensation from Mr. Dillingham for acting as auditor or book-keeper?

A. Yes, sir.

Q. For what time did you receive that, Mr. Kidd?

A. I think about the time McHarg & Company took hold of the Texas Central.

Q. How much did you receive?

A. $600.

Q. When was that paid to you?

A. It was about a year and a half ago, I think. I cannot remember what date. I can find out for you.

Q. What was that for?

A. My services.

Q. For doing what?

76 A. I made the reports and kept the books, balanced the books, checked the accounts and was general book-keeper for Mr. Dillingham, and made up his reports from time to time from the time he went out.

Q. Until when?

A. Until the last report was made and the $40,000 was turned over to the court.

Q. That is the same account that was testified to before Colonel Winter?

A. Yes, sir.

Mr. M. T. JONES, being duly sworn, testified as follows:

Testimony of Mr. Jones.

Q. What position do you hold in connection with the South Texas National Bank of Houston?
A. President.
Q. How long have you occupied that position?
A. Since our organization.
Q. What official position does Mr. Dillingham hold in that bank?
A. First vice-president.
Q. How long has he held that position?
Q. Since the bank was organized.
Q. What salary does he receive?
A. One thousand dollars per year.
Q. Were you present when that salary was fixed in 1891?
A. Yes, sir.
Q. State what, if anything, was said about interest on deposit carried by him or secured by him?
A. The board of directors fixed my salary and his at the same time and the question of interest was not discussed.
Q. Was the question of deposit discussed?
A. No, sir.
Q. Upon what ground did they give him that salary of $1,000?
A. It was simply because he was thought to be an influential director.
Q. In lieu of his services?
A. Yes, sir.
77 Q. What proportion of his time has he devoted to the bank?
A. I cannot say exactly—he is there frequently. I am not in the bank all the time.
Q. You have other business besides?
A. Yes, sir.
Q. Mr. McAshen is the active manager?
A. Yes; he is the active manager.
Q. The meetings are held there regularly every month?
A. Yes, sir.

Cross-examination:

Q. You say he was as influential director?
A. Yes, sir.
Q. That was the consideration?
A. Was, that and his services, given to the bank.
Q. Was it anticipated that he should give his services in fixing the salary?
A. I believe all the directors give some services.
Q. All the directors did?
A. Yes—but of course the president and vice-president are supposed to give more than the others; and I reckon they are there oftener than the others.

Q. In what respect was he an influential director?
A. Because he had a large acquaintance.
Q. And he had a large fund there?
A. Of course he had something there—there is no question about that.
Q. Was that kept excluded from your mind altogether when you assented to that salary?
A. I believe the board of directors fixed the salaries and I don't think Mr. Dillingham had much to say about it.
Q. How about yours?
A. The board of directors fixed the salaries.
Q. You were a member of that board?
A. Yes, sir; but I do not think I voted in the matter at all.
Q. You did not vote?
A. That is my recollection.
Q. Was it not talked among some of the stockholders or directors that it was given to Dillingham on account of this deposit?
78 A. Possibly might have been talked but I did not hear of it if it was.
Q. This idea of his being an influential director was discussed?
A. Yes, sir; it has been discussed that our whole board was influential.
Q. But the others were not given salaries as directors?
A. No.
Q. Of course you and Mr. McAshen did because you were president and Mr. McAshen was manager, and as a matter of course gave all his time?
A. Yes; all his time and he received the largest salary.
Q. That question of Mr. Dillingham being a- influential director was discussed in the board?
A. No, sir—if it was I did not hear it.
Q. It just came about—how?
A. It was my supposition.
Q. You say it operated on your mind?
A. I did not vote.
Q. You did not vote on his salary at all?
A. I do not think I did—that is my recollection.
Q. Is it customary to give vice-presidents salaries?
A. It is in some banks and in some it is not.
Q. In what banks here do they give salaries to the vice-presidents?
A. I cannot tell you now but I am a little inclined to believe that the Planters' and Mechanics' give the vice-president a salary but I would not state positive. I know that the Commercial does—or did a while ago.
Q. Is it not a fact that at that time Mr. Dillingham was director he was also receiver of these two railroads and that that matter influenced you and the other directors in giving him that salary?
A. No, sir—not with me.
Q. Is it not a fact that the very fact that he was receiver and had

control of these funds of the railroads is what went to make up an influential director?

A. That matter was not discussed that I ever heard of in the board of directors.

Q. Was it outside?

A. Possibly so.

Q. By the individuals?

A. Possibly so.

79 Q. Did you discuss it with some of the individuals?

A. No, sir.

Q. Did not Judge Brashear decline to vote for it and discuss the question with the members of the board—did not he vote against it?

A. I think the judge has always been opposed; that is in several instances has signified that he was opposed to paying anybody a salary that was not actually engaged in the bank.

(Mr. BRASHEAR:) I voted against the salary of vice-president and president all along.

Q. (To Mr. Jones:) Was it not discussed outside of the board of directors by the directors and stockholders that this money was given to Mr. Dillingham on account of his being an influential member on account of being receiver?

A. I cannot say.

Q. Did they talk it to you?

A. No.

Q. Anybody ever talk it to you or did you ever talk of it to the directors or stockholders?

A. No. I want to make a statement about this board of directors. I have heard it said in reference to the influential director.

Q. Who said it?

A. I have heard it said, but I cannot say by whom, but it is pretty general talk about town, that our board of directors when organized was very influential board of directors, and is so at the present time. That explains the influential directors and something about the influence of Mr. Dillingham.

Redirect examination:

Q. What was the vice-president's salary in the Commercial when you were a director there?

A. $1,800.00 I think.

Q. It is not a fact that the vice-president of the First national receives a salary?

A. I think he does, but I do not know.

Cross-examination:

Q. You have heard of it?

A. Yes.

80 Mr. HENRY BRASHEAR, being duly sworn, testified as follows:

Testimony of Mr. Brashear.

Q. Upon what ground did you object to the salary?

A. On the ground that we have got a directory every member of which is I think there every day they are in town, they are at the bank and I did not think the president nor vice-president does much more for the bank than the others do, and on that ground I voted against the salary of either of them—that is about it.

Q. Did you ever hear it discussed among the members of the board of directors either outside the meetings or inside, or among the stockholders that this salary was given to Mr. Dillingham on account of the funds?

A. I talked about it afterwards because I was violently opposed to it. It was not talked about in the directory meetings.

Q. You did talk about it afterwards?

A. I said I could see no reason for it then, and I do not now.

Q. Are you familiar with the amount of services that Mr. Dillingham has performed for the bank?

A. Yes, sir.

Q. How do his services compare with yours as to the amount of services rendered?

A. About the same I reckon. I do not see that one director has any advantage over another—they give it all the time they have to spare. Perhaps I have a little more time to spare than some of the others.

Q. You receive a salary?

A. No. I would not have it if it was tendered me.

Q. How many others are there—directors?

A. Nine all told.

Q. None of the others receive a salary?

A. No.

Q. Do any of the other directors have charge of any trust fund or did they that you know of when they went into the bank?

A. I do not know what you mean by that.

Q. You did not put any deposit there or hold any deposit there—any large amount of trust funds?

A. No, sir.

81 Q. Do you know of any other of the directors that did?

A. No, sir; I do not know exactly what you mean by a trust fund.

Q. Any fund they had control of belonging to other people.

A. Yes, one of the directors was manager of the street railway company.

Q. How much did he have there?

A. I do not know—it was Mr. McGregor—he has the funds of the street railway company deposited there.

Mr. A. P. ROOT, being duly sworn, testified as follows:

Testimony of Mr. Root.

Q. Where do you reside?
A. I live here in Houston, Texas.
Q. Are you connected with any bank here?
A. Yes, sir.
Q. What one?
A. First national.
Q. In what capacity?
A. I am the present president—have been cashier.
Q. How long have you been connected with it?
A. Twenty-two years nearly.
Q. Did Mr. Dillingham when receiver of the Houston & Texas Central railway and the Texas Central railway make any deposit with your bank of the funds of said railways?
A. Yes.
Q. To what extent?
A. I do not know what the average amount would be—they have had as high as $300,000.00.
Q. At one time?
A. Yes.
Q. Did he ever ask for interest on deposit?
A. No.
Q. Did he ever suggest interest?
A. No.
Q. Did your bank ever pay him interest?
A. No.
Q. Never paid anybody interest?
A. No; did not pay interest.
82 Q. How was that deposit kept, general account subject to check?
A. Oh, of course.
Q. What value practically was the deposit to your bank?
A. None at all—never was used—the only use we could possibly make of it was in handling exchange. We never loaned it. We always treated it as an account likely to be drawn out at any time.
Q. Transient?
A. Yes; in other words we always expected it to be drawn out at any time.
Q. It was not worth anything to the bank?
A. No; I always regarded it so—we never considered it so.

Cross-examination:

Q. Your bank is one of the oldest in town?
A. Yes.
Q. Is it the First national bank organized here?
A. Yes.
Q. Necessarily having that name?
A. Yes.

Q. What capital has it?
A. $100,000.00.
Q. You have quite a surplus?
A. Yes.
Q. What is it?
A. $400,000.00.
Q. You don't know whether he had any Texas Central money deposited there?
A. Yes, sir.
Q. And some of the Houston & Texas Central?
A. Yes, sir.
Q. Do you know when that was?
A. Well from the very time I think that Mr. Dillingham took charge of the road as receiver.
Q. Up to about 1891?
A. Yes; until the road passed out of his hands.
Q. When the railroad was sold?
A. After that; this large amount I believe belonged to the
83 Houston & Texas Central—the Texas Central had not such an amount as that—I understood Judge Clark asked about both.
Q. It belonged to the Houston & Texas Central?
A. Yes.
Q. And you don't remember as to the other road?
A. No. If my memory serves me right it was subject to greater fluctuation.

Redirect examination:

Q. The Texas Central was?
A. Yes, sir.

T. W. House, being duly sworn, testified as follows:

Testimony of Mr. House.

Q. You live in Houston, Texas?
A. Yes, sir.
Q. Are you connected with any bank?
A. I am in the banking business.
Q. What is your firm?
A. T. W. House.
Q. Do you know Charles Dillingham?
A. Yes, sir.
Q. During his acting as receiver of the Houston & Texas Central and the Texas Central railways did he made any deposits in your bank?
A. Yes, sir.
Q. Constantly?
A. Yes, sir; deposited every day.
Q. To what extent approximately?
A. From fifty to one hundred and fifty thousand dollars.

Q. In your bank?
A. Yes, sir.
Q. Was that regarded by you as a permanent or transient deposit subject to check at any moment?
A. It was put in there subject to check.
Q. Was it checked out often—constantly drawn on?
A. In the regular course of business—on pay-rolls and things of that kind.
84 Q. What did you estimate the real value of that account on deposit—that kind of a deposit—one that is put in there and drawn on constantly—is it of any practical value to a bank?
A. None at all—it is only what we call a good account.
Q. Only regarded in banking circles as a good account?
A. That is all—unless it is put in there and left for a certain length of time.
Q. Did Mr. Dillingham ever charge you interest on that deposit?
A. No.
Q. Did he suggest it?
A. No.
Q. Did you ever pay him interest?
A. Not a bit; no, sir.

It is agreed by counsel that E. W. Cave, treasurer for the receiver, Dillingham, during his incumbency, would testify, if present, as follows:

"That during the entire receivership of Charles Dillingham, of both the Houston & Texas Central railway and the Texas Central Railway Companies, never gave him any direction as to the designation of deposits in the different banks in Houston, but that he, the said Cave, divided the deposits among these several banks according to his own discretion, without any direction from Dillingham, receiver."

The following five (5) papers relating to the South Texas national bank were introduced in evidence:

Objections.

Charles Dillingham.
Page 5, Q. They did give you this $1,000 for that reason?
Page 6, Q. Have you any of these periodical statements that have been made for publication?
Page 20, Q. Was anything said at that time as to further pay for the receiver?
Page 22, Q. While this was going on from Sept., 1891, to 1895, I believe it continued, were you ever called to account or asked to close your receivership by McHarg, Moran and Gould?
A. No, sir, except this letter, etc.

Page.
85 J. E. McAshen.
M. T. Jones.

Page 45, first answer: "No; I want to make a statement," etc.
Page 45, Q. Is it not a fact that the V. P. of the 1st nat'l bank receives a salary?
Henry Brashear, page 45.
Q. Upon what ground did you object, etc.?
Page 46. You talked about it afterwards?
Filed Sept. 26, 1896.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy*.

Testimony of John G. Winter.

Hearing of Exceptions to Master's Report on Receiver's Account, before Hon. A. S. Lathrop, at Waco, Texas, September 9, 1896.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY *vs.* TEXAS CENTRAL RAILWAY COMPANY *et al.* } Original Bill in Equity. No. 21.

FARMERS' LOAN & TRUST COMPANY *vs.* TEXAS CENTRAL RAILWAY COMPANY *et al.* } Cross-bill in Equity. No. 33.

Mr. CAMPBELL: I wish to introduce in evidence first the depositions of Col. C. C. Gibbs. (Here said depositions were read before the court.)

Col. JOHN G. WINTER, after being duly sworn, testified as follows:

Q. Please state whether or not you ever acted as special master in chancery in the case of The Farmers' Loan & Trust Company *vs.* Texas Central Railway Company and The Morgan's Louisiana & Texas Railroad & Steamship Company *vs.* The Texas Central Railway Company, Nos. 21 and 33 equity?

A. Yes, sir,

86 Q. Do you remember the applications of Turner, McClure & Ralston, Farrar, Jones & Kruttschnitt, Willie, Mott & Ballinger, Baker, Botts and Baker, and perhaps some other attorneys, and the receivers Chas. Dillingham and Benj. G. Clark for final compensation being presented to you or referred to you?

A. I think so; yes, sir.

Q. Would you recognize the original applications? Examine these papers and see if they are them.

A. This petition of Baker, Botts & Baker, master's No. 321, was filed with me, and those of Farrar, Jonas & Kruttschnitt, master's No. 321, and of the receiver Clark, was filed with me, likewise that of the receiver Dillingham.

Q. I wish you to state whether these were referred to you for action by the court, or whether they were filed with you direct?

A. They were filed with me direct. The files show that they were filed with me before they were filed with the clerk.

Q. In your capacity as master, was there a standing order that such matters as these were to be referred to you?

A. My recollection is that these compensation matters were referred to me by special order of the court.

Q. Do you remember whether you made a report on these claims or not?

A. The report in this case will show.

Q. Look and see if that is your report. You made that report, did you not?

A. Yes, sir; report in master's No. 321, filed August 25th, 1891, was made by me and signed by me, and I recollect the circumstances.

Q. Is that report on the compensation of the receivers and the attorneys?

A. Yes, sir, the report speaks for itself. It appears to be as you say. It speaks for itself however.

Q. "After several adjournments the report again came up for consideration in my office in Houston, Texas, on the 24th day of August, 1891, when appeared the aforementioned counsel, Messrs. Botts, Kruttschnitt & Ballinger, whereupon the counsel
87 named stated in open court that the claims for compensation by the receivers Clarke and Dillingham, and by the Farmers' Loan & Trust Company, trustee, by Messrs. Baker, Botts & Baker, Farrar & Kruttschnitt, Turner, McClure & Ralston, Ballinger, Mott & Terry Mott & Terry, Ballinger, Mott & Terry, Ballinger, Willie, Mott & Ballinger, and Mott & Ballinger had been adjusted with the purchasing committee hereinbefore mentioned. I therefore made no report upon these items." Now, I wish you to explain what was stated before you by counsel what claims had been adjusted?

Mr. CLARKE: We object to this on the ground of its irrelevency and incompetency.

COURT: You can go on and answer.

A. I could not state what transpired there more fully than what you have just read. There was quite a gathering in my office at the time. That is all that was stated. When the reference was called that statement was made by some one of the gentlemen, but I do not know who.

Q. Do you know if the claims set forth in the petitions upon which that report is made, the petitions filed by the parties respectively in master's No. 321, are the ones you have examined?

A. I suppose so. The report will show.

Q. Do you remember of having the testimony and statements of counsel taken down and reduced to writing on that hearing? Examine this and see if it is the report of the testimony taken down.

A. Yes, sir; this paper appears to be the report of the testimony taken upon the application of Alexander and Clarke and Krutt-

schnitt and Ballinger on behalf of the Metropolitan Trust Company.

Q. There were affidavits introduced, were there not?

A. I don't recollect. I can only say that all the testimony, oral or of whatever form, was returned with the report. This paper that you have just handed me appears to be the deposition of M. F. Mott in master's No. 321, and filed with me.

Q. Here is the application on behalf of the Metropolitan Trust Co., for allowance.

A. This is the application in master's No. 321 for compensation for the solicitors of the Metropolitan Trust Company.

88 Q. It was referred to you at the same time?

A. Yes, sir; I suppose so; under the general reference. I notice in my report it recites that the reference came before me under some article of the final decree.

Mr. CAMPBELL: Now, if the court please, I offer in evidence the whole proceedings, the applications of Dillingham and Clark, and of all the attorneys, and the Farmers' Loan & Trust Co. and the Metropolitan Trust Co. for compensation. I also offer in evidence the report of the master on same, and the report of the testimony taken upon that hearing by the master for the consideration of this master.

Q. Now, I will ask you, Col. Winter, if you remember who was the master commissioners in the sale of that road?

A. Chas. Dillingham and myself.

Q. Do you remember making a special report to the court with exhibits attached in reference to the amount of money that was paid out to the commissioners and other matters that came up before you? I call your attention to your report, page 483, (L. W. Campbell's) in the Texas Central receivership.

A. This report appears to be a special report of the master commissioners reporting their sale of the property, and what transpired thereunder. I prepared all the papers in these cases.

Q. I call your attention to "Exhibit A" attached to this report on page 488. Please explain that to the court—the payments that were made there.

A. This appears to be a statement filed with my report. This Exhibit A sets forth the full purchase price bid at the sale of the property and the amounts expended thereunder.

Q. State what was p-id Mr. Dillingham under that report, as set forth in Exhibit A.

A. $20,000.00.

Q. And the other amounts are shown?

A. Yes, sir.

Q. What was that $20,000.00 for?

89 —. It was, as I understood it, the amount agreed upon.

Mr. CLARK: As a matter of fact there is no dispute about that. It is already in evidence that he received it.

Q. What is your recollection about it?

A. My testimony would only be so far as I can recollect. My recollection is that these amounts set forth in Exhibit A are the amounts the respective parties named in it were to receive as fees. I see here an allowance to myself. I understood that to be in settlement of my fees to that time.

Mr. CLARK: Up to that time?

A. Yes, sir. I will state here that when these amounts were agreed upon by the parties it was with the supposition that the receivership was to be immediately closed.

COURT: That was so far as your fees were concerned?

A. Yes, sir. I will state that it went on for some time thereafter and all counsel in the case, except yourself, affirmatively agreed to some small allowance to me, and I believe that you stated that you would make no objection to it.

Mr. CLARK: That was in addition to what you had already received?

A. Yes, sir.

Mr. CAMPBELL: That was by an agreement subsequently made?

A. Yes, sir.

COURT: That was in regard to your own compensation?

A. Yes, sir.

Mr. CAMPBELL: I wish to offer in evidence this report in vol. 1 of the Record of the Texas Central Receivership, page 483 to 492 inclusive.

Mr. CAMPBELL: We will now offer the testimony of Henry K. McHarg, taken by deposition (here said depositions were read).

Mr. CAMPBELL: If the court please, I wish to have it understood that we introduce in evidence the reports of the master from Sept., 1891, to April, 1895.

Endorsed as follows: Exhibit "A." Accompanying report of Special Master A. S. Lathrop. Filed September 26, 1896. J. H. Finks, clerk, by C. A. Richardson, deputy.

90 *Depositions of Henry K. McHarg.*

Suit Pending in the Circuit Court of the United States for the Northern District of Texas, at Waco, Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY CO. ET AL. } No. 21. Equity.

FARMERS' LOAN AND TRUST COMPANY
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

Answers and depositions of Henry K. McHarg to the accompanying interrogatories propounded to him in the above entitled and numbered cause, taken before me, John E. Roeser, in accordance with the accompanying commission.

Answers of the Witness Henry K. McHarg.

1st interrogatory. Please state your name, age and residence, and whether or not you are the McHarg that constituted the committee who represented the mortgage bondholders in the purchase of the Texas Central Railway Company's property.

A. Henry K. McHarg. 45 years old. Residence Stamford, Connecticut. I was one of the committee who represented the mortgage bondholders in the purchase of the Texas Central Railway Company's property.

2nd interrogatory. This is a proceeding on behalf of the purchasing committee, who objects to certain items of $150.00 each, charged in the accounts of Charles Dillingham, as receiver, covering a period of from September, 1891, to April, 1895, aggregating between six and seven thousand dollars. The committee claiming that they paid Mr. Dillingham $20,000.00 on about September 14th, 1891, in full of his services as receiver, until his discharge. Now will you please state if you remember the circumstances under which said $20,000.00 was paid, and how it was paid, and your understanding as to what such payment covered.

A. I recollect the fact of our company having paid $20,000.00 in full for Mr. Dillingham's services and supposed at the time that it covered them entirely.

91 3rd interrogatory. You will please state if you had any attorney, or attorneys, looking after the said claim of Dillingham and others. If so, please state who acted as your attorney, or the attorney for the committee and state who had control of such matters, you or your attorney, and who, if any one, negotiated such settlement. State all these matters as fully as you can.

A. Messrs. Turner, McClure & Rolston were our attorneys for the trust company and for the committee. They had full control of all matters connected with the litigation and negotiated the settlement.

4th interrogatory. State whether or not you had ever at any time, either prior or subsequent to the payment of said $20,000 had any agreement or understanding with Mr. Dillingham as to his right to receive any additional compensation over and above said $20,000. Please state fully.

A. The committee or myself never had any agreement or understanding with Mr. Dillingham as to his right to receive any sum in compensation for his services in excess of the $20,000.

5th interrogatory. State whether or not you or the committee ever authorized or empowered any person to agree to give Mr. Dillingham any additional compensation for his services. Please state fully.

A. Neither the committee or myself ever authorized or empowered any person to agree to give Mr. Dillingham any additional compensation for his services.

6th interrogatory. Please state the names of the persons who constituted the purchasing committee to purchase the Texas Central Railway Company. State whether or not said persons are bondholders secured by the first mortgage on the Texas Central Railway Company, which mortgage was foreclosed.

A. The purchasing committee to purchase the Texas Central Railway Company consisted of Messrs. Chas. Moran, Cornelius B. Gold and myself. They either represented large holders of the first-mortgage bonds or were themselves *bona fide* holders.

7th interrogatory. Please state what your understanding was, and from whom you derived your information, as to what
92 the $20,000 was paid Mr. Dillingham for. That is, what services was he to perform? Please state this fully.

A. My understanding was that the $20,000, which seemed to me an extravagant amount at the time, was paid Mr. Dillingham in full for his services. Could not state from whom I derived my information—presume it came from our attorneys.

8th interrogatory. The officer taking your depositions will exhibit to you a true copy of a letter written by you to Mr. Dillingham, the original of which is now on file with Mr. J. H. Finks, clerk of the U. S. circuit court at Waco, upon examination of this letter, you will see what it says. Now, you will please state the facts and circumstances under which this letter was written, and explain the language therein used, which has reference to Mr. Dillingham being under pay as receiver, and please state when you first learned that he was continuing to draw his salary of $150 per month. Please attach said copy to your answers to these depositions.

A. The letter, a copy of which has been exhibited to me, was sent Mr. Dillingham under great stress of circumstances. The Texas Central railway under his administration had every year larger operating expenses than earnings, showing an average of about $30,000 more expenses every year than earnings. We had taken hold of the property for the company and had made it pay from the beginning, earning in the first year approximately $40,000 net. It seemed to me that there must have been great mismanagement, to use a very generous term, of the property. I discovered

also, that the attorneys representing Mr. Huntington who had done all they could to embarrass the bondholders, who were trying to obtain possession of their property, had received fees out of the sale and it seemed to me that there was no telling where the expenses were going to stop. I desired, if possible, to limit the receiver in some way. I knew he had some $40,000 in his hands deposited in a bank of which he was an officer or a large stockholder, as I understand it, at no interest and I wondered whether anything was going to be left. I did not write the letter with the idea he was entitled to the $150 per month, or to any additional sum over the $20,000,
93 for I considered that amount an outrage upon our committee to pay at the time, but we seemed forced to do so and had to submit. In fact, my letter was sent him simply to try and limit our payments in the future not with the idea or thought that he was entitled to anything and as you will notice was written on March 12th, 1894, when the Texas Central Railway Company had assumed control of the property Sept. 25th, 1891, or nearly 2½ years after we had been in possession.

9th interrogatory. Please state whether you ever at any time agreed with Mr. Dillingham that he should draw said sum of $150 per month as a salary after the road was delivered to the purchaser, or ever authorized or empowered any other person to so agree with him.

A. I never had any agreement with Mr. Dillingham whatsoever, or ever authorized or empowered any other person to make one with him.

10th interrogatory. Please state who, if any one, was the active member of the committee, and whether within your knowledge any other person of the committee authorized or empowered Mr. Dillingham, or promised or agreed with him that he should have the said sum of $150 per month.

A. In answer would say Mr. Cornelius B. Gold was, as I consider, the most active member of our committee and am sure that neither he or any other person authorized or empowered Mr. Dillingham, or promised him that he should have said sum of $150 per month, or, in fact, any other sum.

Cross-interrogatory 1. If you say that you never had at any time either prior to or subsequent to the payment of $20,000 to Receiver Dillingham, any agreement or understanding with Receiver Dillingham as to his right to receive additional compensation over and above said $20,000, please explain why you wrote a letter to Mr. Dillingham after such settlement, stating that you expected him to receive additional compensation. Is it not a fact that you wrote such a letter? If so, and you have a copy, please attach a copy of said letter to you- answers hereto, and identify the same by writing your name across the face, and state in your answer to this cross-interrogatory that you have done so.

A. In my testimony I have given my reason for writing
94 the letter. It was brought about by the impossibility, which it seemed to me, our committee had of obtaining fair treatment for its bondholders, we having assumed control of the prop-

erty Sept. 25th, 1891, and the date of my letter being March 12th, 1894, and my recollection is that it was inspired by my becoming aware that Mr. Dillingham, had $40,000 deposited in a bank with which he was connected belonging to the bondholders and upon which they were not receiving one cent of interest. It is a fact that I wrote such a letter. I have attached a copy of the same with my answers hereto and have identified it by writing my name across the face of the same.

JOHN E. ROESER,
Notary Public, N. Y. Co.
HENRY K. McHARG.

Cross-interrogatory 2nd. Is it not a fact that you have been conversant with the orders and proceedings in this equity cause from its inception to the present time, or a part of said time, and is it not a fact that you have known all along that the court had entered its order allowing Mr. Dillingham, as receiver, $150 per month, "to date from the possession of the receiver and to continue while Mr. Dillingham gives his personal attention to the business of the company, or until the further orders of this court"?

A. It is not a fact that I have been conversant with the orders and proceedings in this equity cause from its inception to the present time, or even a part of said time, and until reading your cross-examinations I did not know that the court had entered its order allowing Mr. Dillingham, as receiver, $150 per month, "to date from the possession of the receiver, and to continue while Mr. Dillingham gives his personal attention to the business of the company, or until the further orders of this court." Your interrogatory No. 2 is my first information that such an order stands as enclosed between these marks.

Cross-interrogatory 3. Is it not a fact that your settlement with Mr. Dillingham, by the payment of $20,000, was solely with reference to his services as receiver and manager of the railway property which was sold under foreclosure and delivered to the purchasing committee of which you were a member, and is it not a further
95 fact that after the sale of said railroad and its delivery to you and your associates that moneys, lands, town lots, land notes and other assets of the Texas Central railway were left in the hands of the receiver Dillingham for administration, the whole being the subject of litigation by conflicting claims, and that in the progress of this administration and after the payment of this $20,000 Receiver Dillingham sold lots, lands, collected notes, paid claims upon the orders of the court, and did perform all the work and labor necessary and proper to be performed by receivers under similar circumstances, and is it not a fact that you especially in your letter to Receiver Dillingham recognized this fact and expressly admitted that he, Receiver Dillingham, was entitled to additional compensation notwithstanding the settlement?

A. When the settlement of $20,000 was made with Mr. Dillingham, I supposed it was in full for his services. It is a fact that about $40,000 (which I learned several years afterwards) remained in the

hands of Receiver Dillingham after turning the railroad property over to the Texas Central railway, I was not aware and never have been, up to the present time, that this was the subject of litigation by conflicting claims and I am not aware that Mr. Dillingham sold lots, lands, collected notes and paid claims upon the orders of the court since that time. I am unaware how much work or labor has been necessary since that time. When I wrote the letter to Mr. Dillingham it was not that I believed that he was entitled to anything additional, but it was only written from a desperate feeling that the poor bondholders who had fought so long for their property would be flinched still further and make more sacrifices, and if possible, I desired to end this condition of affairs.

Cross-interrogatory 4th. Is it not a fact that during the whole progress of the litigation you nor your associates, ever objected to the charge and claim of Receiver Dillingham of $150 per month, after the sale of the railway and the settlement made by the purchasing committee, notwithstanding the fact that you were fully acquainted with the fact that the receiver was charging the fund in the hands with this compensation of $150 per month under the continuous order of the court?

96 A. I was not, as I have testified before, aware that the court had ordered that Mr. Dillingham be paid $150 per month, in its continuous order, so that I naturally had no chance to object, but can assure the court that I would promptly have done so had I been aware of it, as I felt that our property in his hands had been very disastrously administered as shown by the result of operations of the railroad and that $20,000 for his services was far too liberal a compensation, in view of the fact, that month by month he had allowed the railroad company to run into debt, further and further, which in time must be paid by the first-mortgage bondholders, which I represented.

Cross-int. 5. Is it not a fact that you never objected to said order, and you nor your associates never authorized or requested your counsel to ask the court to limit the order or to qualify it in any manner and that no objection was made thereto until this present proceeding upon the final settlement of the receiver's accounts?

A. My answer to this is as I have testified before. Not being aware of the order of the court I had no opportunity of objecting until the present proceeding was begun, to force a final settlement of the receiver's accounts.

Cross-int. 6. Is it not a fact that in your judgment as one of the purchasing committee and one of the complainants in this special proceeding, that Receiver Dillingham is entitled meritoriously to compensation for his services as receiver after the sale of the railroad and its delivery to yourself and associates? If not, please explain why?

A. It is my judgment that in view of the facts the reckless management of the property while in Mr. Dillingham's hands as receiver as compared with the administration of Mr. Hamilton, its present vice-president, since the reorganization of the new company as found by the following statement:

Gross and Net Earnings for 4 Years under Receiver Dillingham's Administration.

	1888.	1889.	1890.	1891.
Earnings.....	$249,600	$316,574	$282,324	$300,781
Expenses.....	266,725	335,122	308,203	357,686
Deficit.....	$17,125	$18,548	$37,347	$50,905

97 *Gross and Net Earnings Texas Central Railway Co. under Present Management.*

	9 months ending June 30, 1892.	1893.	1894.	1895.
Earnings..	$229,732 86	$337,528 73	$253,856 20	$344,614 84
Expenses..	194,937 92	246,257 73	186,185 62	211,095 50
Net e'rn'gs.	$34,794 94	$91,271 00	$67,670 58	$133,519 34

would be positive proof to unbiased persons that Receiver Dillingham's management to be generous in one's language of him, was so lax, weak and inefficient, that the $20,000 already received was not meritoriously earned for his services as receiver.

In my judgment Receiver Dillingham is not entitled, meritoriously, to any compensation for his services as receiver, after a sale of the railroad, and its delivery to myself and associates.

I. I hereby attach to my answers and hereby make a part hereof.

I. Exhibit I, consisting of true copies of certain telegrams and letters received.

II. Exhibit II. A duplicate original of the receipt of Charles Dillingham, receiver.

III. Exhibit III. A copy of the application of said Charles Dillingham for an allowance.

IV. Exhibit IV. A correct statement of sundry payments made by the Texas Central first-mortgage bondholders' committee, which said payments were made as therein described and set forth, and

V. Exhibit V. A true copy with clerk's certificate, of a letter sent by me to said Charles Dillingham, March 12th, 1894.

Signed and subscribed this the 23d day of June, 1896.

HENRY K. McHARG.

JOHN E. ROESER,
Notary Public, N. Y. Co.

98 EXHIBIT I.

Telegrams.

JULY 22ND, 1891.

Dated Iredell, Texas.

To Turner, McClure & Rolston, 22 William street, New York:

Draft report too late to send your copy. Draft comes up for con-

sideration, Houston, Saturday; Mott notified. Wire me Houston if desired. Your claim allows Mott fifteen, Metropolitan two, Botts Farrar twenty-five hundred extra, Clarke three, Dillingham thirty, all thousand.

(Signed) JOHN G. WINTER.

JULY 25, 1891.

Dated Houston, Texas, 25, 22 William street, New York.

After full conference with parties we find a settlement as matter of compromise can be made upon following terms, to wit: Dillingham, receiver, twenty thousand in addition to what he has received; Farrar & Kruttschnitt, including compensation as counsel for Morgan's Company, five thousand in addition to what they have received. Baker, B. & B., ten thousand additional. All of Motts firms, seventy-five hundred. These offers of compromise are *predicted* upon immediate acceptance and payment; if not accepted, Dillingham, Clarke & Farrar & K. will file exceptions that allowance to them are inadequate, and other parties will claim full amounts allowed by master. We advise acceptance of offer. Think they are the best you can get. See Clarke in person. Of course offers are made as a compromise and without prejudice.

(Signed) M. F. MOTT.

JULY 24, 189–.

Dated Galveston, Texas, 24.

To Turner, McClure & Rolston, 22 William St., New York:

Baker & Botts were made general attorneys of receivers by order of court, allowance to them for such services at rate of three thousand a year. We claim credits, etc., against this allowance. I will
99 be in Houston tomorrow and note objections before master to his allowance to Clarke, Dillingham, Baker & Botts, Farrar & Kruttschnitt and Metropolitan Trust. Do not think he will make any change in his report. Will send you copy.

(Signed) M. F. MOTT.

JULY 27, 1891.

Dated Galveston, Texas, 29.

To McClure & Rolston, 22 William St., New York:

Winter writes me that he will change his report so as to allow Dillingham five thousand per annum, less amounts received, and B. B. & B. three thousand per annum. This increases somewhat their allowances, but does not affect compromise offers. Wait for my letters of yesterday.

(Signed) M. F. MOTT.

GALVESTON, *July* 24, 1891,

Herbert B. Turner, Esq., New York.

MY DEAR MR. TURNER: I had just finished the preparation of some exceptions to be presented to the master in the compensation

matters when I received yours of the 20th. I will take immediate steps to procure reports of the Shirley case and of the State's suit for the Waco N. W. lands, and have same sent you.

The master has prepared his report and we are to meet him in Houston tomorrow to present our objections, if any we have, before he files his report.

He allows Turner, McClure & Rolston, $30,000 in addition to what they have received, and in addition thereto their disbursements of $3,460.40. He allows the Farmers' Loan & Trust $10,000 in addition to the $5,000 paid your firm, and $900 interest on this payment. He allows the old firms of Ballinger, Mott & Terry, etc., $10,000, and Willie, Mott & Ballinger and their successors $5,000. To the Metropolitan Trust $2,000. To Benjamin G. Clarke $3,000, to Charles Dillingham $30,000, less payments previously received on account. To Farrar & Kruttschnitt, as general counsel of receivers, $10,000, less amounts already received by them, and to Baker, Botts & Baker $18,000 for their services as general attorneys of the receivers without any reductions.

100 It appears that on May 16th, 1885, the court entered the following order: "The receivers are authorized to retain Messrs. Baker, Botts & Baker as their attorneys, and Messrs. Farrar & Kruttschnitt, as their general counsel." This order has not been revoked or modified and the parties named are therefore entitled to their *quantum meruit* for services respectively rendered. Baker, Botts & Baker had a sort of indefinite understanding that they were to receive six thousand per annum from receivers of H. & T. C. They have received that amount, but one thousand per annum has been charged against the Texas Central, and so carried on reports. Our contention is that this amount is a proper charge against B., B. & B. so far as the Texas Central is concerned and should be deducted from the gross allowance to be made them.

The $10,000 awarded F. & K. as general counsel is subject to amounts already paid them—which, I think, will leave a balance of between $2,500 and $3,000 still due them. I will ascertain definitely tomorrow. Until I get to Houston I cannot tell precisely what Dillingham has received. If he has received one hundred and fifty dollars per month regular since April, 1885, he is to be charged with about $11,000—which deducted from the gross allowance of $30,000 would leave a balance due him of $19,000. Of course these figures are only approximately correct.

Now in regard to your own compensation, I spoke to Mr. Ballinger yesterday upon the subject and he seemed averse to make any reduction. Judge Willie is not here, but I am satisfied he would not consent to any abatement of the amount awarded to W., B. & M. I think, however, I may induce Mr. Ballinger to agree to abate a fair percentage if the money is paid at once. I will see all parties in Houston and if they will agree to comprimise, will wire you from that point. I will probably mail you tonight exceptions which I will hand to the master and which comprise the substance of what our objections will be after his report is filed. Look over them and add anything to them that will occur to you; and then

mail to Mr. T. J. Bollinger with instructions to file. I probably will not be here at that time.

101 Steps have been taken looking to a reopening of the Winter case before Special Master Dyer—tho' I do not see that we can accomplish much by doing so. We can probably get some lawyers to say they think the claim is large—but what does the opinion of experts amount to in comparison with the facts, and with the personal knowledge of the court, compensation of the master is governed by no fixed rules and is purely a matter of discretion. The court will only allow such amount as it thinks equitable.

Sincerely yours,
(Signed) M. F. MOTT.

GALVESTON, *July* 26, 1891.

H. B. Turner, Esq., New York.

DEAR SIR: Accompanied by Mr. Bollinger I went to Houston yesterday for purpose of making objections to the draft of the report submitted by Mr. Winter in the compensation matters. We met Mr. Kruttschnitt, Col. Botts, Judge Baker and Col. Dillingham. The master was present with his stenographic clerk, J. E. Oldright. My first effort was to see if the different parties would abate anything from their claims provided immediate settlement was made and thereby avoid filing of report, consequent publication thereof, litigation and delays. After considerable negotiation I wired your firm the result, substantially as follows: "After full conference with parties here, a settlement as a matter of compromise can be made if the money is paid at once, to wit: Dillingham twenty thousand in addition to what he has received. Farrar & Kruttschnitt five thousand in addition to what they have received, including compensation as attorneys for Morgan's Company. Baker, Botts & Baker, ten thousand additional. All of our firms twelve thousand five hundred. These offers of compromise are predicated upon immediate acceptance and payment. If offers not accepted Dillingham, Clarke and Farrar & Kruttschnitt will file exceptions that the awards to them are not sufficient and the other parties will contend for all allowed them by the master. We advise acceptance. We think offers best we can get. You can see Clarke in New York. Let us hear from you at the earliest practicable moment. Of course these offers are made as a compromise and without prejudice." The situation is about as follows:

102 First. As to Dillingham he was disappointed in the amount of the award and insisted that it should not be less than $30,000, in addition to the amounts already received. He was present with his attorney who had prepared objections to the draft of the report on several grounds, and was ready to present and urge the same. The proposed report gave him in the neighborhood of twenty thousand additional, with which he was not satisfied, and he claims ten or twelve thousand in addition to the allowance. I think that you and I know pretty well that he would get all he claims at the end of a litigation. It was with much difficulty he could be

induced to make the offer. He seemed entirely confident and regards a ten-thousand-dollar abatement in his claim, as a great concession. I think he was in serious earnest.

Second. As to Farrar & Kruttschnitt, as shown in my letter of the 24th they were appointed general counsel of the receivers by order of the court. They claim $2,500 in addition to amounts already received compensation as such general counsel. The master allows them ten thousand dollars less amounts hitherto paid them, and on making a calculation of credits I find the allowance gives them the additional $2,500. I consider this a reasonable allowance. They were appointed general counsel by order of the court, for six years or more having given advise and assistance, and have at all times stood ready to do so. They were precluded from taking employment against the road or against the receivers. I really think the allowance made them as general counsel of the receiver a very moderate one.

Third. As to Farrar & Kruttschnitt's claim for compensation as attorneys of the Morgan's Louisiana & Texas Railroad & Steamship Company, at whose instance the property was placed originally in the hands of the receivers. They prepared and filed the bill, obtained receivership, etc., and claim that their efforts tended to the protection and preservation of the mortgaged property. In addition, they hold that a large amount of property, such as town lots, land notes, &c., not embraced in the mortgage, has, through the instrumentality of the receiver, been administered and the proceeds used in conduct and betterment of the road. You will observe
103 that the master makes no recommendation or award as to their claim in this particular, but relegates the matter to the court upon the facts. F. & K. had prepared objections to this portion of the report, insisting that the master should decide the question. I do not think it requires the son of a prophet to predict that Judge Pardee will grant them an allowance on this score.

So that in submitting an offer from them to take five thousand for their entire claims we thought we were scoring a point for the bondholders.

Fourth. As to Clarke, receiver, Mr. Winter stated that in a conversation with Mr. Tweed the latter told him that Clarke would be satisfied with a nominal compensation of three thousand dollars, and that he might use his name as authority for saying so. Clarke's counsel, Mr. Kruttschnitt, said that he supposed there would be no objection to this amount, as it was so small, but if any objection was to be made to it he would file objections on Mr. Clarke's behalf, asking that the amount be materially increased. His contention is that Mr. Clarke qualified by giving bond. That the use of his name gave confidence to the bondholders; that while he gave Mr. Dillingham his power of attorney he was under the *onus* and responsibility of a bond and ready to act at any time in case of any inability on the part of Mr. Dillingham, etc. These views are entitled to consideration, and you can negotiate with Mr. Clarke in New York.

Fifth. As to Baker, Botts & Baker, as stated in my letter of the

29th, they were appointed general attorneys of the receivers under order of the court, made on the 16th day of May, 1885, and have continuously rendered services from that time, as is usual with this able and distinguished firm "they did the work" with characteristic modesty. Col. Botts would not fix a specific sum, but put the facts before the master and left it to him to say what would be a fair compensation. The master fixed the amount at eighteen thousand dollars, which is a fraction less than $3,000 per annum. I may say in parentheses that no competent railroad lawyers in Texas would have undertaken the work at that figure on a contract. You will observe from the master's report that a *quasi* contract existed
104 between B. B. & B. and the receivers of the Houston & Texas Central r'y by which they were to receive six thousand dollars a year for their services as general attorneys of that road. That the receiver had paid them six thousand per annum, but without their consent, and arbitrarily charged one thousand of that amount to the Texas Central. The master declines to allow this one thousand a year to be charged against B. B. & B. and gives them the eighteen thousand net. Our contention was that it should be deducted. Judge Baker agreed with the master, but these gentlemen agreed to take ten thousand as a compromise, with the understanding that there was to be no effort towards an adjustment of thousand dollars a year, and no demand made on the H. & T. C. therefor. I think their proposition is a very liberal one.

Sixth. As to the compensation of Ballinger, Mott & Terry, Bollinger & Mott, Bollinger, Mott & Bollinger, Mott & Bollinger, and Willie, Mott & Bollinger, I induced Mr. Bollinger to agree to a reduction of twenty-five hundred dollars, and we agreed to accept twelve thousand five hundred as a compromise for all of these firms. I think this is liberal enough. I had placed our fee entirely too low, forgetting to considerable extent the work we had done (until I afterwards refreshed my memory) and not anticipating the work still before us.

Seventh. As to the Metropolitan Trust none of the parties were present in Houston, but I presume that they will agree to a ratable reduction predicated upon immediate payment, if not their claims will have to be paid in full or fought.

The offers above indicated are simply an effort to adjust the compensation matters, and, as before stated, they are predicated upon early payment. I find the parties in interest averse to litigation, and they prefer to make the reductions mentioned if a report and controversy can thereby be avoided. If the offers are accepted the master can simply report that the compensation matters have all been adjusted.

But if they are not accepted, then the report will be attacked by both sides. My firms, B. B. & B. I presume your firms, the F. L. & T. Co. and the Metropolitan Trust will stand to the letter of the report. Dillingham Clarke and Farrar & K. will contend
105 for an increase. We will have to fight them and also B. B. & B. and Met. Trust Co. Extended litigation and perhaps

appeals will result, with corresponding postponement of the delivery of the road.

Candidly, I think if the offers are accepted the bondholders will save not less than twenty thousand dollars, speaking a little egotistically, I regard yesterday as the best day's work of my life, and I have the serene consciousness that I have done my full duty to my clients. But if they are disposed to take other views and instruct a contest we will do the best we can. With this latter contingency in view, I forwarded you a crude draft of proposed objections last Friday, at the instance of all parties Mr. Winter withholds the filing of the report until offers of compromise can be heard from them. If compromise is not accepted he will then file his report with exceptions, when under the supreme equity rules (thirty-days rule) parties will have until the rule day in September to file objections, when the matter will be ready for hearing before the court.

Under instructions of the final decree the master is now engaged in ascertaining and will soon report the oustanding indebtedness of the receivers, the number, &c., of the suits pending, claims filed, etc. There are some questions as to the proceeds of the sales of town lots, collection of lands, notes, etc., claimed by the Morgan Company as not coming under the mortgage. Funds from these sources have been applied to the use of the road but a separate account of them had been kept by the receiver. I presume the new owners will look after such matters when they take possession.

Now a few words as to Winter's claim for services as master against the Texas Central. He told me that he submitted to the judge names of lawyers in Galveston, Houston and Waco, from whom he could select a special master for his case, and that out of the names so presented he selected Mr. Dyer, of the firm of Clark, Dyer & Bolinger, of Waco. While I agree with you that, considering the employment of Winter as master in the H. & T. C. receivership, his claim against the Texas Central is disproportionate and excessive. The claim of two per cent. on $750,000, for
106 making the sale, I regard as extortionate. Of course, if these claims are allowed in full, by the special master, we must contest them to the last. I had a frank talk with Mr. Winter yesterday. He told me that he had received a letter from you, offering $1,500 a year, but as that amount was so much below what he considered the just value of his services he had not answered the letter. He said he was satisfied that your views and his being so far apart, there was no common ground on which they could be harmonized. He agreed to reopen his case before Dyer, but said that he would also introduce additional testimony in rebuttal of any we might offer. That while he did not think there was any good reason for reopening the hearing, he wanted a full and fair hearing and the award made after the closest scrutiny into the amount and value of his services, etc.

As soon as I got your telegram of last Tuesday I got Mr. Bollinger to telegraph to Dyer and also to Winter, requesting the hearing to be reopened. I am inclined to doubt the wisdom of the step. We had shown that Winter was contemporaneously receiver

of the H. & T. C. That the master's costs in H. & T. C. were about 2,400 and those of the T. C. 323, also the difference in importance of two roads, etc. From these facts (not from opinions of lawyers) the court would be well warranted in drawing the conclusion that the relative time and attention to the business of the mastership of the two roads was in the proportion of nearly eight to one. The compensation of the master should be graded accordingly. Now what do we gain by reopening the hearing. We may, and probably will, find some lawyers who will say that the services were not worth as much as four or five thousand a year, but Winter will put on four or five to our one to establish the affirmative.

But as clients seem to have been agitated by some letters received from Waco (Mr. Winter says you wrote him—Moran had showed you one) and to think that we had not properly presented the matter upon the hearing before the master, I have yielded my judgment, and the more especially as Mr. Bollinger wishes the case reopened, but as I before said, I am doubtful as to the expediency of the move.

I suppose I ought to apologize for the length of this letter, but the importance of the matters I have written about has
107 urged me beyond the ordinary brevity of business letters. Give us benefit of your conclusion as soon as possible.

Sincerely yours,

(Signed) M. F. MOTT.

JULY 27TH, 1891.

In re Texas Central, Charles Moran, Esq., chairman.

DEAR SIR: The following sums have been reported by the master as allowed by him for services rendered in the Texas Central case. To the Metropolitan Trust Company and its attorneys two thousand dollars. Messrs. Baker, Botts & Baker, general attorneys for the receivers and attorneys for the railroad company in the litigation, eighteen thousand dollars; Messrs. Farrar & Kruttschnitt, attorneys for the Morgan Company, and attorneys for the receivers, eighty-five hundred dollars; Benjamin Clarke as receiver, three thousand dollars; Mr. Dillingham as receiver, thirty thousand dollars in addition to what he has already received, as to which we are not informed; also the representatives of Judge Ballinger, who acted with us in the case, and the firm of Willie, Mott & Bollinger, opinions and services in all fifteen thousand dollars.

My correspondent telegraphs me that he has had a full conference with the parties at Houston and is authorized to submit the following figures for a settlement as a matter of compromise; Dillingham, receiver, twenty thousand dollars; Farrar & Kruttschnitt, five thousand dollars; Baker, Botts & Baker, ten thousand dollars; Ballinger's executors, and Willie, Mott & Ballinger, seventy-five hundred dollars. These offers, he says, are predicated upon immediate acceptance and payment, and are the results of a long conference. It is necessary to know what will be done by the committee, because the parties in interest desire to file exceptions against the referee's report if an arrangement cannot be made. Dillingham,

Clark and Farrar & Kruttschnitt will file such exceptions on the ground that the allowance made to them is inadequate. The other parties, unless the settlement is made, will claim the full amounts allowed by the master, as above suggested. We suppose you
108 know that this matter will be in the hands of Judge Pardee for settlement, unless an arrangement is made. Of course it is desirable to make an arrangement, but you must yourself judge whether you are likely to fare better or worse by bringing the matter before the judge. Of course these matters must be arranged before possession can be obtained. Please get the opinion of the committee and let us hear from you as soon as practicable.

Very truly,

(Signed) HERBERT B. TURNER.

P. S.—Since writing the above I have another telegram from my correspondent, who says that the amounts allowed Dillingham and Baker, Botts & Baker, in the master's report, will be five thousand per annum to Dillingham and three thousand to Baker, Botts & Baker, which increases their allowances somewhat, but that this does not affect suggested compromise. He also tells me to wait for a letter from him before we finally decide. You will see that the compromise deducts some twenty-nine thousand dollars from the figures mentioned in my letter. I will let you know as soon as I receive Mr. Mott's letter, and suggest that in the meanwhile you confer with the committee.

EXHIBIT 2.

Circuit Court of the United States, Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } Original Bill.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } Cross-bill.

Received from Messrs. Moran, Gould and McHarg, purchasing committee, the sum of twenty thousand dollars ($20,000.00)
109 in full of my fees and charges as receiver of the Texas Central Railway Company, as per agreement dated Houston, Texas, Sept. 14th, 1891.

(Duplicate.)

CHARLES DILLINGHAM, *Receiver.*

EXHIBIT 3.

United States Circuit Court for the Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company, Complainant, *vs.* TEXAS CENTRAL RAILWAY COMPANY, Defendant. } No. 21. In Equity.

Now before John G. Winter, special master in the above-entitled cause, comes Charles Dillingham, receiver in the above-entitled cause, and prays that said special master will make to him such an allowance for his services as receiver in the above-entitled cause, from the date of his appointment until his discharge, as to said master may seem just and proper, and appearer prays for all further and equitable relief.

(Signed) FARRAR & KRUTTSCHNITT,
Solicitors for Charles Dillingham.

EXHIBIT 4.

Statement of Sundry Payments Made by the Texas Central 1st-mtge. Bondholders' Committee.

1891.				
April	15.	To Farmers' Loan & Trust Co., c't'f'te of deposit, order of John G. Winter & Charles Dillingham, as master commissioners		25,000 00
		Payment on account of purchase of road at foreclosure sale:		
Aug.	18.	Draft of E. W. Cave, treasurer of receivers, dated Aug. 11, 1891, order So. Texas nat. bank for ties and freight on same:		
		N. East- div'n	1,863 14	
		N. West- div'n	23,597 33	
				25,410 47
110		This draft was drawn at sight on New York.		
Sept.	9.	Voucher dated Houston, Tex., 14 Sept., 1891 (draft of committee on F. Loan & Trust Co.), Chas. Dillingham, receiver, in accordance with directions of the order of the court as a prerequisite to the delivery of the possession of the property to said committee		120,000 00
"	9.	Voucher dated Houston, Tex., Sept. 14, 1891 (draft of committee on F. L. & Trust Co.), Chas. Dillingham, receiver, in full of my fees and charges as receiver of the Texas Central R'y Co., as per agreement		20,000 00
"	9.	Voucher dated New Orleans, La., Sept. 14, 1891 (draft of committee on F. L. & Trust Co.), Farrar & Kruttschnitt, in full of all fees and charges due us in the matter of the Texas Central R'y Co. in the litigation affecting said property		5,000 00
"	9.	Voucher dated Houston, Tex., Sept. 14, 1891 (draft of committee on F. L. & Trust Co.), Baker, Botts & Baker (same as preceding voucher)		10,000 00
"	9.	Voucher dated Galveston, Tex., Sept. 14, 1891 (draft of committee on F. L. & Trust Co.), Ballinger, Mott & Terry (same as preceding voucher)		7,500 00
"	9.	Voucher dated Galveston, Tex., Sept. 14, 1891 (draft of committee on F. L. & Trust Co.), Willie, Mott & Ballinger (same as preceding voucher)		5,000 00

These drafts were handed to Turner, McLure & Rolston and by them forwarded to the sundry parties.

" 11.	Draft of committee on Farmers' Loan & Trust Co., B. G. Clarke, receiver, in full, as per agreement for my fees as receiver of the Texas Central Railway Company, paid to B. G. Clarke in New York.....		2,500 00	
" 16.	Draft of E. W. Cave, treasurer, for joint receivers, dated Sept. 11, 1891, order of			
	So. Tex. nat'l bank, ties, N. east'n div..	$4,358 22		
	Freight and ties, N. West- div	1,293 60		
	Freight on fastenings, St. Louis to Ross..	359 34		
	Freight on rails, N. Y. to Ross.	6,735 51		
	Insurance	82 46		
		6,817 97		
			12,829 13	
	This sight draft was drawn on New York.			The-e payments made in New York.
1892.				
Oct. 22.	To Turner, McClure & Rolston, on account fees in Texas Central R'y case.....		15,000 00	
1893.				
Feb. 24.	To Turner, McClure & Rolston, balance, with interest.....		20,803 77	
" "	To Farmers' Loan & Trust Co., trustee, fees, with interest.....		17,198 33	
			286,291 70	

111 EXHIBIT 5.

Texas Central Railway Company, executive department.

Charles Hamilton, vice-president and general manager.

WACO, TEXAS, *March 12th*, 1894.

Charles Dillingham, Esq., Houston, Texas.

DEAR SIR: I am somewhat surprised to find that your accounts as receiver of the Texas Central road, have never been closed. The Farmers' Loan & Trust Company, communicated with Messrs. Mott & Armstrong, in Galveston, in October last urging their immediate settlement; and I understand from a letter written by them to Mr. Campbell, our attorney, in January last that your attorneys in New Orleans, Messrs. Farrar, Jonas & Kruttschnitt, agreed that it ought to be done immediately.

I also notice that Mr. Winter has made a report up to Dec. 31st, 1892, inclusive, of the balance on hand. I suppose that when the road was sold his compensation as special master ceased, and that in fact there was no one under any pay except yourself, as receiver, until your discharge.

I trust you will follow out the spirit of your attorney's suggestion to Col. Mott, and at once co-operate with Messrs. Mott & Armstrong in closing the receivership and turning over the cash and assets to their owners.

Very truly yours, HENRY K. McHARG, *President.*

(Henry K. McHarg written across the face of this letter, and a certificate of the clerk of this court, that it is a true copy is also attached.)

Certificate of Officer Taking Depositions.

STATE OF NEW YORK, }
City and County of New York. }

I, John E. Roeser, a notary public in and for the State and county of New York, do hereby certify that the foregoing answers of Henry K. McHarg the witness before named, were made be-
112 fore me, and were sworn to and subscribed before me, on this the 23rd day of June, 1896. By the said witness, Henry K. McHarg. Given under my hand and official seal at New York city, New York, the 23rd day of June, 1896.

JOHN E. ROESER,
Notary Public, N. Y. Co.

Direct Interrogatories to C. C. Gibbs.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. Equity.

and

FARMERS' LOAN & TRUST COMPANY
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

Chas. Dillingham, or Messrs. Clark & Bolinger, his attorneys of record, will take notice that five days after service hereof, the objectors, Charles Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, for the first-mortgage bondholders, will apply to the clerk for a commission to take the depositions of the following-named witness, viz: C. C. Gibbs, who resides in Bexar county, Texas, whose depositions when taken to be used upon the hearing of the objections of said purchasing trustees to the final accounts of Chas. Dillingham, as receiver of the Texas Central Railway Company.

L. W. CAMPBELL,
Attorney for Purchasing Trustees.

1st Int. State your name, age, residence and present occupation?
2d Int. Please state whether or not you ever at any time
113 had any connection in a business way with the Texas Central Railway Company, or its lands. If so, please state your relations and duties, if any, and when they began and when they ceased, as near as you can?
3d Int. If you say in answer to the preceding interrogatory that you were land commissioner and had charge of the lands and town

lots of Texas Central Railway Company, please state when you took such charge and how long your services as land commissioner continued, and in this connection you please state who attended to such lands from September, 1891, to April, 1895? Please state who rendered such land for taxes? Please state who paid the taxes on these lands. State who sold the lands and who made the deeds? Who wrote the notes and who collected the money and who performed the duties, if you know, in reference to looking after such lands and giving the land matters belonging to the Texas Central Railroad Company general attention? State this as fully as you can.

4th Int. You will please state, if you know, about what date the lands of the Texas Central Railway Company were sold under execution on judgment rendered in favor of the Farmers' Loan and Trust Company and Morgan's Louisiana & Texas Railroad & Steamship Company, and if so, who purchased said lands, and give the date of the deed, if you know, or have access to it, and state who has had possession of said lands and the control thereof since the date of said purchase?

5th Int. You will please state if it is not a fact that said lands were sold about April, 1893, or prior thereto, and state whether or not Mr. Dillingham has had anything to do with said lands and lots since the sale above mentioned?

6th Int. Please state whether or not you received any compensation for your services in regard to these lands and lots, and if so, from whom did you receive it, and how did you receive it, for attending to said lands and lots belonging to the Texas Central Railway Company.

L. W. CAMPBELL,
For Purchasing Committee.

114 *Cross interrogatories to C. C. Gibbs.*

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. Equity.

and

FARMERS' LOAN AND TRUST COMPANY
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

Cross-interrogatories to the witness C. C. Gibbs.

Cross-int. 1. If you say you ever had any connection in a business way with the Texas Central Railway Company or its lands, please state who employed you? Is it not a fact that you were employed by Charles Dillingham, receiver of said railroad company?

Cross-int. 2. Is it not a fact that in all your actions with reference to the lands and town lots of the Texas Central Railway Company, that you acted under the orders and directions of Charles Dillingham, until such lands were sold? Is it not a fact that Charles Dillingham, receiver, paid you your salary or compensation for such services? Is it not a fact that Charles Dillingham, receiver, signed the deeds for the lands you sold as agent or land commissioner? Is it not a fact that when you collected money for sales of lands of the Texas Central railway, or town lots, you paid the money over to the receiver or to the treasurer of the receiver, by direction of the receiver.

CLARK & BOLINGER,
Attorneys for Respondent, Charles Dillingham.

Now comes Charles Dillingham, by Clark & Bolinger, his attorneys, and hereby in all things accepts service of the foregoing interrogatories, and agree- that the deposition- of the witnesses therein named may be taken without commission and returned to J. H. Finks, clerk of the circuit court of the United States for the northern district of Texas, at Waco.

CLARK & BOLINGER,
Attorneys for Chas. Dillingham.

115 *Answers of C. C. Gibbs.*

Answers and depositions of C. C. Gibbs, of San Antonio, Bexar county, Texas, to the accompanying direct and cross interrogatories propounded to him in the above-entitled causes, taken before M. C. Harper, notary public in and for Bexar county, Texas, according to the agreement of counsel waiving commission, accompanying said interrogatories.

To the first interrogatory he answers:

My name is Charles Churchill Gibbs; I shall be fifty-four years old the fifth day of June. My residence is San Antonio, Bexar county, Texas. My present occupation is land commissioner of the lands owned by F. P. Olcott, the G. H. & S. A., the T. & N. O., and the G. W. T. & P. R'y Companies.

To the second interrogatory he answers:

Yes, I had connection in a business way with the lands of the Texas Central Railway Company, and my duties in relation to these lands were the same as to all other lands under the control of Charles Dillingham, receiver. My relations with the said lands began on January 1st, 1889, and in fact have continued up to the present date, the lands having changed hands in the meantime.

To the third interrogatory he answers:

As stated in the answer to second interrogatory I took charge of the lands and town lots of the Texas Central Railway Company on January 1, 1889, and my services as land commissioner under the receiver, continued until November, 1893, when the lands were sold by the United States marshal, but I have had continuous control of

said town lots and lands up to the present time. My department rendered the said lands for taxes. E. W. Cave, treasurer of the receiver, paid the taxes on these lands upon statements made by my department. The lands were sold by me and the deeds were made by my department and executed by the receiver. The notes were written by my department, and the money was collected by E. W. Cave. My department performed the duties in reference to looking after the lands and town lots and gave them the necessary attention in all respects except the collection of the notes.

To the fourth interrogatory he answers:

116 According to the deed executed by P. B. Hunt, United States marshal to C. C. Gibbs and Charles Hamilton, the lands of the Texas Central Railway Company were sold under execution on judgment rendered in favor of the Farmers' Loan and Trust Company and Morgan's Louisiana & Texas Railroad and Steamship Company on November 7, 1893, and the said lands were purchased by Charles Hamilton and myself. The said lands were shortly afterwards conveyed by Mr. Hamilton and myself to Messrs. McHarg and Gates, trustees, but Mr. Hamilton and I have exercised control over these lands in rendering same for taxes paying taxes, making sales; and all things incidental to their management, since the date of purchase, the clerical work being done entirely by this office.

To the fifth interrogatory he answers:

Our records do not show that the Texas Central Railway Company lands were sold about April, 1893, but as stated in answer to interrogatory fourth on November 7, 1893, Mr. Dillingham has had nothing whatever to do with said lands and lots since the sale above mentioned, in so far as giving me instructions in any respect or my making any reports to him may be concerned in fact, have had no instructions from him whatever since April 1893.

To the sixth interrogatory he answers:

I did not receive any specific compensation for my services in regard to the handling of the Texas Central lands and lots, the handling of these lands however comprised a part of my duties as land agent of the receiver. My salary was paid on a Houston & Texas Central Railway voucher and whether there was any portion of it charged to the Texas Central Railway lands I cannot say as I know nothing of any distribution made of such expenses. I received my salary from the receiver for attending to these and other lands.

C. C. GIBBS.

Answers of C. C. Gibbs to Cross-interrogatories.

To the first X interrogatory, he answers:

I was employed as land agent by Charles Dillingham, who was receiver of the Houston & Texas Central and the Texas Central Railway Companies.

117 To the 2nd cross-interrogatory he answers:

It is a fact in all of my actions with reference to the lands

and town lots of the Texas Central Railway Company, I recognized Mr. Dillingham and acted under his orders and directions, when any were given, until such lands were sold. Charles Dillingham, receiver, paid me my salary as compensation for these and other services, but I cannot say if he paid me any specific compensation for such service, my salary having been paid, as stated, on a Houston & Texas Central Railway Co. voucher. Charles Dillingham, receiver, signed the deeds for the lands I sold as agent or land commissioner. Very few collections were made by me for the sale of the lands or town lots of the Texas Central Railway Co., but it was the understanding, that if any were made, the money was to be forwarded to the treasurer of the receiver, as he handled all money arising from the property controlled by the receiver as related to my department.

C. C. GIBBS.

Certificate.

THE STATE OF TEXAS, }
County of Bexar. }

I, M. C. Harper, a notary public, do hereby certify that the foregoing answers of C. C. Gibbs, the witness before named, were made before me, and sworn to and subscribed before me on the 11th day of May, 1896, by the said witness C. C. Gibbs.

Given under my hand and official seal at San Antonio, Texas, the 11th day of May, 1896.

[SEAL.]

M. C. HARPER,
Notary Public, Bexar Co., Texas.

Petition of Receiver Dillingham for Compensation.

United States Circuit Court for the Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company, Complainant, vs. TEXAS CENTRAL RAILWAY COMPANY, Defendant. } No. 21. Equity.

118 Now, before John G. Winter, special master in above-entitled cause, comes Charles Dillingham, receiver in the above-entitled cause, and prays that said special master will make to him such an allowance for his services as receiver in the above-entitled cause, from the date of his appointment until his discharge, as to said master may seem just and proper, and appearer prays for all further and equitable relief.

FARRAR & KRUTTSCHNITT,
Solicitor for Chas. Dillingham.

Endorsed as follows: No. 21 & 33. United States circuit court, Waco. Master's consolidated No., 321. Petition of Receiver Dillingham. Filed August 25th, 1891. J. H. Finks, clerk. Filed June 8, 1891. John G. Winter, special master.

Petition of Receiver Clarke for Compensation.

United States Circuit Court for the Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND Steamship Company, Complainants, *vs.* THE TEXAS CENTRAL RAILWAY COMPANY, Defendant.	No. 21. In Equity.

Now, before John G. Winter, special master in above-entitled cause, comes Benjamin G. Clark, receiver in the above-entitled cause, and prays that said special master will make to him such an allowance for his services as receiver in the above-entitled cause, from the date of his appointment until his discharge, as to said master may seem just and proper, and appearer prays for all further and equitable relief.

FARRAR & KRUTTSCHNITT,
Solicitors for B. G. Clark.

Endorsed as follows: No. 21 and 33. United States circuit court, Waco. Filed June 8th, 1891. John G. Winter, special master. Filed August 25th, 1891. J. H. Finks, clerk.

119 *Petition of Farrar & Kruttschnitt for Compensation.*

United States Circuit Court, Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMship Company, Complainant, *vs.* TEXAS CENTRAL RAILWAY COMPANY, Defendant.	No. 21. In Equity.

Now come Edgar H. Farrar and Ernest B. Kruttschnitt, composing the law firm of Farrar and Kruttschnitt, and present to the Honorable John G. Winter, special master, appointed by the court to report upon the compensation to be made to the receiver, to solicitors and to others, as appears by the final decree in this cause, and pray said master to make to them such an allowance as their compensation as solicitors for the receiver from the date of the appointment of said receiver to his discharge, as may, to said master, seem just and proper; and also to make to your petitioners such an allowance as solicitors for the complainant herein as to said master may seem just and proper.

And petitioners pray for all further and necessary order in the premises, and for general relief.

E. H. FARRAR AND
E. B. KRUTTSCHNITT,
For Selves.

Endorsed as follows: No. 21 & 33. United States circuit court, Waco. Master's consolidated No. 321. Petition of Farrar & Kruttschnitt for compensation. Filed August 25th, 1891. J. H. Finks, clerk. Filed June 8th, 1891. John G. Winter, special master.

Petition of Baker, Botts & Baker for Compensation.

United States Circuit Court for the Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMship Company, Complainant, *vs.* TEXAS CENTRAL RAILWAY COMPANY, Defendant.	No. 21. In Equity.

120 Now comes the law firm of Baker, Botts & Baker, before John G. Winter, special master in the above-entitled cause, and pray that said master will make to your petitioners such an allowance as solicitors for the receiver from the date when said receiver was appointed up to his discharge as to said special master may seem just and proper.

And your petitioners pray for all further and equitable relief.

BAKER, BOTTS & BAKER.

Filed June 8, 1891. John G. Winter, special master. Filed August 25th, 1891. J. H. Finks, clerk.

Report of Testimony on Compensation.

HOUSTON, TEXAS, *June 8th*, 1891.

In master's No. 321 in equity cause No. 21 and cross-bill No. 33, at Houston, June 8, 1891, came on to be heard so much of the decree of April 12, 1887, in said cause as refers to the question of compensation.

Present: Messrs. W. B. Botts, L. C. Alexander, E. B. Kruttschnitt and T. J. Ballinger.

In behalf of the Metropolitan Trust Co. Judge Alexander files statement for compensation on behalf of company and counsel.

Court adjourned at 3 o'clock p. m. today.

Court convened at 3 p. m.—present, Mr. T. J. Ballinger, Col. W. B. Botts, Mr. E. B. Kruttschnitt—when the matter of so much of the decree of April 12, 1887, in equity cause No. 21 and cross-bill No. 33, as relates to the question of compensation, came on to be heard.

No. 3 on docket, compensation of Receiver Dillingham was first taken up, Mr. E. B. Kruttschnitt representing this receiver. Mr. Kruttschnitt offers the record, and it is now agreed that the record, including all proceedings, etc., in this case is hereby considered in evidence in behalf of all parties making claim for allowances herein.

Mr. Kruttschnitt also offers on behalf of the receivers a statement of the receipts and disbursements of the receivership to be prepared and to be a duplicate of accounts already filed, and a statement of receipts and disbursements since the last account was filed, to be produced and filed before the master.

1 CHAS. DILLINGHAM sworn.

Examined by Mr. KRUTTSCHNITT:

Q. You have been receiver in this cause since April 4, 1885?
A. I think you are correct.
Q. What was the condition of this road when you were appointed
e of the receivers?
A. You mean the physical condition?
A. Yes.
A. It was in very poor condition, it had been built four or five
ears, the ties put in in building were decaying, the road generally
as in poor condition.
Q. Is its condition better today?
A. The Northwestern division is decidedly better, the northwest-
rn portion will compare favorably with any railroad in the State,
ie northeastern portion is still in poor shape.
Q. What is the length of the northwestern portion?
A. 177 miles, the northeastern is 51 miles or something like that.
Q. You will produce and file with the master the statement of
eceipts and disbursements to which I have referred?
A. I will.

(It is agreed that such statement be filed.)

Q. Will you give a further statement of the general management
f that road? I refer particularly to the changes in its physical
ondition, and what amount of work has been done on it.
A. We have gone on trying to improve the road as best we could
with the means at our disposal, we had a good deal of difficulty
with water at times, we had 3 iron bridges washed out one year and
emporary bridges washed out twice the same year, the same year
the track was washed out for quite a distance, there was 15 miles
washed out entirely which had to be repaired and new bridges put
in, this was on the Northwestern division. Last year we had great
difficulty with the Trinity river on the other division, by having
miles of track washed out, we have been obliged to move an iron
bridge and put it in new, several miles of track were washed
122 out last year, but through it all we have managed by
economy to better the condition of the road every year I
think.
Q. What amount of care and attention did you personally devote
to the care of this road?
A. That is hard to answer, every day and year a good deal of
time and attention I have not kept a diary of every hour that I have
been so engaged.
Q. Did it require a great deal of attention?
A. Yes, sir.
Q. Does that road pay its running expenses now?
A. Some years it does, some years it does not.
Q. Which years did it pay expenses?
A. 1889 left a surplus of several thousand dollars over expenses,
last year it did not, on account of washouts, the year before it

came out about even, and the year before that there was a little profit.

Q. How was it before the receivership?

A. I think it was always a loss before the receivership, I am not familiar with those figures.

Q. This statement of receipts and expenditures that you are going to have prepared and filed, will show some items of receipts from other sources than from the property that was mortgaged to the trust Co.?

A. I don't know what was mortgaged.

Q. Can you tell what was derived from the property and what from other sources?

A. Yes, sir.

Q. Can you give us distinctively what was received from town lots, from the sale of town lots not included and intended for railway purposes?

A. Yes, sir.

Q. And from notes handed over to the receiver and received from the sale of town lots?

A. All that will be given.

Q. This statement will be so drafted as to show what was received from railroad and what from other properties?

A. Yes, sir.

Cross-examination:

Q. Are the 2 roads operated under the same or two distinct charters?

A. Two distinct charters.

123 Q. But in connection with each other?

A. In connection with each other to a certain extent.

Q. To what extent?

A. I am receiver of both roads, but there is a different superintendent.

Q. Do you mean the general officers are different?

A. The division officers are different.

Q. The general officers are the same.

A. What do you mean?

Q. I mean that since you have been receiver the general officers are the same?

A. The general freight agent and auditor are the same.

Q. What about attorneys?

A. The general attorneys are the same.

Q. What are the traffic relations between the 2 roads?

A. Traffic arrangements, I don't understand you exactly.

Q. I mean the general traffic transactions between the 2 roads?

A. My instructions are to give the Texas Central what we would give to any company not connected with us.

Q. And only that?

A. Only that; to treat fairly both companies.

Q. What way have you of keeping books?

A. We keep the books separate.

Q. How do you separate the earnings and expenses?

A. The expenses are absolutely separate, the earnings are kept separate by the 2 roads as with any other road, the books are separate and distinct.

Q. Are the books kept by the same book-keeper?

A. No; the Texas Central has a separate book-keeper.

Q. The auditor is the same?

A. The auditor is the same.

Q. What other business or employment were you engaged in while receiver of the Texas Central?

A. I am also receiver of the Houston & Texas Central railway.

Q. You are unable to state what time was given to the duties of receiver of the Texas Central; can you approximate it?

A. I cannot.

Q. How did it compare with the time given to duties connected with the Houston & Texas Central?

124 A. I can't tell you; my answer to the previous question answers that; there were questions coming up every day in connection with both roads.

Q. Is it not a fact that your labors in the care, control and management of the Texas Central were light, as compared with that of the Houston & Texas Central?

A. The business of the Houston & Texas Central is very much larger, but the anxiety and care is greater in the Texas Central receivership on account of the economy necessary to be exercised to keep it going. I have had to give it a great deal of attention to keep subordinates from extravagance and to keep the road going with the means at my disposal.

Q. Have your duties as receiver been such as to consume the whole or the greater part of your time?

A. I have had nothing else to do.

Q. There was sufficient duty to keep you busy the greater portion of your time?

A. I think you are right about that, it occupied the greater portion of my time.

Q. What contract, if any, did you have with your legal department of the Texas Central?

A. None that I know of.

Q. What compensation, if any, did you pay the legal department?

Q. Under order of court, Farrar & Kruttschnitt were paid $100 a month, Baker, Botts & Baker $1,000 a year.

Q. Are these amounts charged on the books as debits and credits?

A. Yes, sir; in addition to that we had local attorneys.

Q. That $1,000 a year referred to by you as paid to Baker, Botts & Baker was simply deducted from $6,000 on account of the Houston & Texas Central and charged to the Texas Central?

A. I found them getting $5,000 a year from the Houston & Texas Central and $1,000 from the Texas Central. Whether that was taken from off $6,000 with the Houston & Texas Central I cannot tell except by hearsay.

Q. I understand you to say that Farrar & Kruttschnitt are designated as attorneys for the receivers by the court?

A. Both Farrar & Kruttschnitt were designated by the court.

125 Q. And paid $100 per month?

A. Yes, sir.

NOTE.—Any testimony taken in the matter of allowances by any claimant shall be considered in evidence as to any other claim to which it may be applicable.

Q. That allowance of $100 per month was made by the court?

A. Yes, sir.

Q. I understood you to say the two roads were operated in connection. What do you consider your services as receiver of the Texas Central for the time you have been so employed are worth?

A. I am a modest man, I don't know, I think it ought to be worth as receiverships go, $10,000 a year.

Q. You say $10,000 a year. What was your compensation with the Houston & Texas Central?

A. My compensation allowed by the court was about $16,000 a year. In No. 185 an allowance has not been fixed by the court since then.

Q. Does that include all compensation you received, $16,000 a year?

A. That was for a year and a half, about at that rate, since then I have received $10,000 a year as receiver of the Houston & Texas Central.

Q. That includes all compensation?

A. I don't know whether it does or not, I think the allowance made by the court was $25,000 for about a year and a half, and after that I was allowed to draw *$5,000 a year while Easton & Rintoul were in, and $10,000 a year since that time.

Q. That includes all compensation received?

A. That included all allowed by the court.

No. 2 on docket claim of Messrs. Baker, Botts & Baker, as solicitor for receiver, the compensation during the receivership.

W. B. BOTTS, sworn on behalf of the firm of Baker, Botts & Baker:

Q. You are a member of the firm of Baker, Botts & Baker?

A. I am.

126 Q. You have been general counsel for the Texas Central Railway Company for a number of years before the receivership?

A. Yes, sir.

Q. And since that since the receivership in 1885?

A. Yes, sir.

Q. State the nature of professional work done by your firm in connection with that receivership.

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* This is corrected so as to state $500 per month. John G. Winter, S. M.

A. I will state that the firm of Baker, Botts & Baker and their predecessors have been general attorneys for the Houston & Texas Central Railway Co. from 1870 up to the date it went into the hands of the receivers. In 1878 or 1879, I forget which, the Texas Central Railway Co. was organized; from the inception of its organization, up to the day the Texas Central went into the hands of a receiver, in April, 1885, Baker, Botts & Baker, represented that company in all its litigations, and in the charge and management of all its litigation, and in all matters having legal features connected therewith; that immediately after its organization, the general manager and chief executive officer of the company in this State, came to us and said the road was not prepared at present to pay any compensation to its officers; (the officers of the Houston & Texas Central Railway Co.) for their increased labors, incident to the building, and operating the road (Texas Central) after being built, at present, but that at some future time they would be compensated; that we would be paid for our services thus rendered, and that such payment would commence as soon as they paid compensation to any of them, that the other officers had consented, and they hoped we would; we said, All right. Anterior to the appointment of the receivers of the Texas Central, we were receiving $6,000 a year for our services from the Houston & Texas Central. I have learned that $1,000 of the $6,000 being paid us was charged to the Texas Central railway, at that time. I am not prepared to say at the present time that I know such was the case. I may have known it from the fact of having signed vouchers made on Texas Central blanks, but that was the only knowledge I did have of the fact, if I knew of that fact. After the Houston & Texas Central railway was placed in the hands of receivers, in February, 1885, the firm of
127 Baker, Botts & Baker, were appointed by the court, attorneys for that road, in all its legal matters, and also to act as counsel for the receiver, for which we were paid, as we understood, the sum of $6,000 per year, which compensation was assented to as I now remember, by all the counsel representing the parties in the litigation. In April, 1885, the Texas Central Railway property was placed in the hands of receivers, by order of the court, as shown by the record. Baker, Botts & Baker were named as counsel for the receivers, with the duty assigned to them, of the charge and general control over all litigation of the Texas Central Railway Company. And of the receivers; from that time to this, the firm of Baker, Botts & Baker, have acted as such. Some time ago I noticed that a voucher for one month's salary *had* $83.35 was presented to me for signature and at the same time a voucher for $416.66 for compensation as general attorneys for the receiver of the Houston & Texas Central road, I signed both vouchers, and on inquiry learned that vouchers of a similar character had been signed by members of my firm, but for how long I don't know. During the time that we have acted as general attorneys of the receivers of the Texas Central railway, we have had charge, control and management of all the litigation that was then pending against the Texas Central Railway Co., all suits that have been instituted since against

the Texas Central Co. and all of the suits and interventions instituted against the receivers of the Texas Central. In addition to this duty or service, we have always advised—have been the resident advisors—as resident counsel of the receivers, in all of its legal matters, we have had frequent consultations with Mr. Dillingham, the resident receiver, and in many matters, what number, how many, it is impossible for me to tell; suffice it to say, that we were never called upon without rendering him all the assistance in our power. Unless this payment of $83.33 a month, which was paid to us on the Texas Central branch, and our receipt thereof, is a payment on account of services, we have received no compensation for services rendered the Texas Central railway, or its receivers, from the commencement of the suit up to the present time. Our contract with Col. Jordan, when he was general manager of the
128 Houston & Texas Central railway, was that he was to pay us at the rate of $6,000 a year.

Q. When did you first discover this first payment of $83.33?

A. Don't know, some time ago, I don't remember its being brought to my attention before that time.

Cross-examination:

Q. You were allowed and received $1,000 a year for the Texas Central railway?

A. No, of the money that was paid us we receipted for $83.33 per month on the Texas Central branch, the court made no allowance as far as I know, the receiver sent us each month a voucher on the Texas Central blank for that amount, one of which I signed.

NOTE.—We introduce the record in this branch of the case.

CHAS. DILLINGHAM sworn in behalf of Baker, Botts & Baker—No. 2 on docket:

Q. State the general character of the services rendered to you as receiver by the law firm of Baker, Botts & Baker?

A. We have had a great variety of litigation, intervention and suits of various kinds, and Col. Botts has been my advisor every day in the year and it has taken a great deal of his time, he has had supervision of all litigation of the receivership and the company, and I have consulted him on all sorts of subjects from a Central depot to cow cases.

Q. Were your consultations frequent?

A. There has hardly been a day that I have not consulted him.

Cross-examination:

Q. Did Col. Botts' firm receive $1,000 a year?

A. Yes, sir.

Q. Was it charged on the books?

A. Yes, sir.

Q. Did you have any other attorneys at that time?

A. I had local counsel at Waco.

Q. Any other attorneys?

A. No, sir, except Farrar and Kruttschnitt.

129 Q. If Col. Botts did all the work, what did Farrar & Kruttschnitt do?

A. I consulted them more particularly as to foreclosure business.

Q. They were nominal attorneys?

A. I have not consulted them as frequently as Baker, Botts & Baker.

Q. Were they not nominal attorneys as far as receivership was concerned?

A. For the last year or two they have been.

Cross-examined by Mr. KRUTTSCHNITT:

Q. Did I render you any service as to receiver's certificates?

A. I think considerable taking it up to Washington.

Q. Any services in the litigation as to the Farmers' Loan & Trust Co. as to taking possession?

A. I think they got the order to take possession and it was taken from Ohio to Washington and from Washington to Ohio in connection with the litigation with regard to foreclosure they have devoted themselves to that; the overflow cases, damage claims, &c., have gone to Baker, Botts & Baker.

By Mr. BALLINGER:

Q. Who did Farrar & Kruttschnitt primarily represent in this possession suit before Judge Harlan, were they not representing the Morgan Company?

Objected to, as the record will show. Objection overruled.

A. I am unable to answer, they were first counsel for the Morgan Co.

Q. Have they ceased to be, do you know that they were counsel of the Morgan Company?

A. I don't know, at the inception of the suit they were, I have no doubt they were and are still, I expect the record shows that.

Q. Do you know what effect, if any, upon the final settlement of this case, the bill by the Morgan's Steamship Company has

130 had, is it not a fact that it has delayed the final settlement of this case?

A. I presume so.

By the MASTER:

Q. What delay do you mean. The delay from the final decree or the delay from the order of possession?

A. From both.

Q. What about the final bill?

A. It took two or three years.

Q. I mean the suit of the Morgan's Company to establish priority of lien?

A. It has delayed it.

By W. B. BOTTS:

Q. In answer to a question, you spoke of counsel, having counsel at Waco, did you not lose sight of the fact of having counsel on the Eastern branch?

NOTE.—Make insertion by consent. "Counsel at Waco and Corsicana." "Length of road from Ross to Albany is 177 miles and from Garrett to Roberts 51 miles, making 227 miles in all."

E. B. KRUTTSCHNITT sworn, in the matter of compensation of Farrar & Kruttschnitt, No. 5 on docket:

Q. Are you a member of the firm of Farrar, Jonas & Kruttschnitt?

A. Yes, sir, it is the firm of Farrar & Kruttschnitt. It has been docketed in the name of the law firm of Farrar & Kruttschnitt, and is the one appointed by the court, and we prefer to let it remain so.

Q. State when your connection as counsel for the receivers commenced and the nature of your services as attorneys for the receivers?

A. Our services commenced in April, 1885, for the receivers, saw as to the qualifications of the receivers, saw to the receivership valuation of property, from a legal standpoint what obligations were immediately to be paid, what were the requirements for the organization of the receivership, this was attended to by us, we were general counsel for the receiver thereafter, we were consulted
131 as to all matters as to the general course of the receivership, the other part being in charge of Baker, Botts & Baker, we were consulted by Mr. Dillingham, as to the wants of the road, the issuing of receivers' certificates and matters of general policy, our services as stated by Mr. Dillingham were greater after the beginning of the litigation than for the last year or two as to details, the most important was the effort to obtain the issuance of receivers' certificates to put the road in shape; appearing before Judge Pardee and the appeal taken from the order allowing their issue.

Q. That was the application to borrow $125,000 on certificates?

A. Yes, sir.

Q. The only compensation you have received on this road 227 miles in length has been $100 per month paid by the receivers?

A. Yes, sir.

Q. You were also solicitors for the complainant The Morgan Company?

A. Yes, sir.

Q. State what services you rendered in connection with this litigation as solicitors for the complainant?

A. I will state those services that we claim compensation from the court for. On or about the 2nd or 3rd of April, 1885, I went from New Orleans to Waco, and filed the bill by which the receivership was inaugurated, I rendered all services to complainant as solicitor in that case, I claim that as solicitors for the complainant we brought the property into court, a great part of it may have been

expended in the betterment of the road, which was produced as solicitors for complainant and resulted in the creation of a very considerable fund that was not the product of any property mortgaged to the trust company, the amount of this independent fund will appear from the account of the receiver, which is to be filed, we claim compensation for bringing this into court and subjecting it to the order of the court and which has been disbursed by the receivers.

Q. Have you examined that fund?

A. I know the balance, but not the amount spent, it is not included in the mortgage aggregating $75,000.00, the exact
132 details will appear by the account to be filed by Mr. Dillingham, I claim compensation from the whole fund brought into court. This claim for compensation is made separate and distinct from the compensation in the suit brought for priority of lien of Morgan's Company, I don't claim any service should be paid for by other people but for having created this fund that has been administered upon and not for services rendered the Morgan Company in establishing its claim.

Cross-examination:

Q. Taking up the first branch, I understood you to say that your labor was practically confined to that?

A. I said the last two years.

Q. During what period was your labor heaviest?

A. For two years it differed very little till two months after the appeal to the supreme court.

Q. That appeal was when?

A. In the summer of 1887, the records will show.

Q. Your work as solicitor for the receiver was practically confined to a period from April, 1885, to the summer of 1887?

A. That is putting it too strong, the greater amount of work was during that time, since that I have followed up the record; there has been no very decided policy or definite action in that time, it has been just like watching a man's business. I will state the last business requiring much attention was the $125,000 of receivers' certificates I think in the summer of 1887.

Q. For such services as you have rendered, I understand you have been allowed and have received $100 a month during the whole time?

A. Yes, sir.

Q. Since the time mentioned, since the effort to issue receivers' certificates you have not actively participated in the receivership matter?

A. No, sir; I find that the receivership matter ran into the spring of 1888, instead of the fall of 1887.

Q. Now coming to the Morgan division of the claim, I understand you to say you originally filed a bill claiming priority of lien, which was disallowed from that judgment you appealed?

133 A. Yes, sir.

Q. In that case you made the Farmers' Loan & Trust Company a party and they subsequently filed a cross-bill?

A. I don't know whether that made them a party, they came in and filed a cross-bill, the management of that was with my partner Mr. Farrar.

Q. What has been the effect upon this litigation and its final adjustment of that appeal, has it hastened or delayed it?

A. It has delayed the settlement.

Q. It has been expensive to the trust has it not?

A. I don't think so; I don't see where the expenses come in; I think a great part of these expenses would have occurred if it had been in the hands of the bondholders themselves.

Q. You think it is not more expensive?

A. I think it was rather more expensive, I think for a period of probably three and a half or four years, some three and a half years elapsed from the time the appeal was taken till the mandate was sent down, that is the time of the pendency of the appeal, and part of the expenses would have been incurred if it had been in the hands of the owners, I think an administration by a court is more expensive than by the owners.

Q. Your action as counsel for, and the action of the Morgan Company has not been beneficial to the trust?

A. I don't see except as to expenses.

Q. Has it not been the cause of expensive litigation?

A. The expenses will be determined by these hearings, I mean such as may be due to that appeal.

Q. Morgan was not a trustee or holder of any lien?

A. No, sir.

Q. Is it not true that you have been opposed to the trustees and to the bondholders?

A. Yes, sir. I would like to state as to additional expenses on account of the receivership, as a rule an administration by a court is more expensive than by the owners, I think in this case it was probably less than usually is the case, I think you would have to take the expenses of the receiver and his solicitor during the time the appeal was pending and you would have to deduct the expenses of a president and solicitors for the road.

134 Q. Is it not a fact that in the answer of the Texas Central, the fact that the principal was due and the allegation of the cross-bill was admitted?

A. I remember a statement to that effect in the opinion of the supreme court, I think it is stated as the opinion of the supreme court, and is probably true.

Q. Was not the defence of the Texas Central that the principal could not mature and that seventy per cent. of the bondholders did not join in the application to foreclose?

A. That defense was made.

Q. You admitted that the principal was due, is it not true that the Morgan Company took the same position?

A. I did not have anything to do with it in the supreme court, my recollection is that it did.

Q. You also took the position and the Morgan Company, that your lien was prior to that of the bondholders?

A. Yes, sir.

Q. I understood you to say that it is your idea this contention of the Morgan Company delayed the settlement three and a half years?

A. No, the appeal delayed it three and a half years.

Q. Has not that been injurious to the bondholders?

A. I think the administration was more expensive in court than out.

Q. Have they not been compelled by that action to lose interest?

A. No, because I could not say that it would have been earned in their possession.

Q. You think to some extent the bondholders have been injured, but are not prepared to say how much?

A. Just to the extent of increased expenses chargeable to this appeal.

NOTE.—The record is in this case.

By the MASTER:

Q. Can you state what in your opinion would be a reasonable compensation for your services?

A. I have not stated it, I am perfectly willing though to state what I consider would be a reasonable compensation, I think $2,500 more as solicitors for the receiver, and $5,000 as solicitors for
135 the complainant, I mean $2,500 in addition to what we have received prior to the 1st of June, unless something unforeseen happens. It is agreed in all matters of compensation that the Farmers' Loan & Trust Company may file formal objections by the 1st of July.

In No. 4 on the docket, B. G. Clarke.

In this portion of the reference the matter of compensation is submitted on the record.

No. 6 on the docket, compensation of Turner, McClure & Ralston.

In this portion of the reference Mr. Ballinger offers a statement, being a copy of paper, which statement was made before the master in the city of New York on the — day of ——, 1891, which copy so now here offered may be substituted by the original when received.

This is also offered for the Farmers' Loan & Trust Company, Ballinger, Mott & Terry, Ballinger, Mott & Ballinger, as set forth in No. 7. Special attention is called to page 7, where he comments upon the services of Judge Ballinger.

We next offer in evidence the brief for the appellant in the Texas Central, the Farmers' Loan and Trust Company, and Metropolitan Trust Company, of New York, in the Supreme Court of the United States, October term, 1890. We next offer the case for appellant in 185 Morgan Company against the Texas Central, to show specially the amount of work done by Mr. Turner. We offer the brief of the Farmers' Loan & Trust Company in No. 55 and 59, and additional brief.

In No. 7 on the docket, Ballinger, Mott & Terry, Ballinger, Mott & Ballinger, and Mott & Ballinger, and Willie, Mott & Ballinger.

Mr. Ballinger says we ask for $10,000 for Ballinger, Mott & Terry, Ballinger, Mott & Ballinger, and Mott & Ballinger, and $5,000 for Willie, Mott & Ballinger.

We also offer statement of Mr. Turner, as to Judge Ballinger.

We offer in evidence the record, the master's personal knowledge, and the court's personal knowledge.

136 *In No. 2 on the docket, compensation of Baker, Botts & Baker.*

D. C. BOLINGER sworn:

Q. You are a practising attorney at Waco?

A. Yes, sir.

Q. A member of the firm of Clark, Dyer & Bolinger?

A. Yes, sir.

Q. Were you at one time in the office of Baker, Botts & Baker during their term of service as attorneys for the Texas Central railway?

A. I was.

Q. What do you know of the attention given to their business, the character of the work? State how long you were in their office.

A. I was in their office over two years and I think when the receivership began in April, 1885, I was in the office at that time. I will state that I am thoroughly conversant with their method of conducting business as general attorneys of all railways, I have been very familiar with it, have consulted their books frequently, have been in their employ for seven or eight years for a different railway. I know the method on which the business is conducted, and know what work has been done, as I am acquainted with it. I will state in addition as to our business, I am in constant correspondence with their office in addition to as one attorney who is friendly with another, I know from Judge Alexander of Waco, of his important cases that come through their office, I know of its business in Garrett. I am constantly in correspondence with Frost & Etheridge and see the cases that they try.

Q. What is the nature and character of the business?

A. It requires constant attention. The responsibility is very great, keeping attorneys posted and furnishing witnesses when called on, supervising, getting men to hunt up witnesses and giving directions as to cases in litigation. I suppose in each case there is a considerable batch of correspondence eminating from this office. I know the records are thoroughly kept, reports required and reports made by this office.

Q. Were they frequently consulted by heads of departments?

A. The general offices being here, they were. I was not in the employ of the Texas Central. I was in the employ of the

137 Gould system, but I became acquainted with their officers and the officers of the Houston & Texas Central. They came in very frequently, not only one, but all. I knew them all, but had no business with them.

Q. You are in regular practise and know the character of the business attended to by them, and know what the services are gen-

erally, are you prepared to say what you think would be a reasonable compensation for such services? From your knowledge of the business, as being general attorneys and conducting both branches on 227 miles of road?

A. That is a matter of opinion, I think $3,000 per annum would be a moderate compensation, that is my opinion.

L. C. ALEXANDER sworn:

Q. You are an attorney, practising at Waco?

A. Yes, sir.

Q. You are acquainted with the litigation for the Texas Central railway?

A. I have been continuously for ten years and up to this time; I am attorney in charge from Ross to Albany.

Q. State the character of that litigation.

A. It is very varied; a good many suits for personal injuries, a good many for overflows, occasionally some for fire and cattle claims, but not a great many; there is and has been, during the period of receivership, tedious litigation in collecting various vendors' lien notes for land sold by the company, where the parties are difficult to find—foreclosures and matters of that sort.

Q. Does your connection with the business bring you in contact with Baker, Botts & Baker?

A. Yes, sir; we are in constant correspondence with them, advising and being advised as to the various details of the business.

Q. You have a knowledge necessarily of the character of the business?

A. Yes, sir; there is a good deal of business of which they, as general attorneys, have charge; suits against the company with which the receiver is charged, business of the Texas Central Railway Company, as well as that accrued during the receivership.

138 Q. From your knowledge of the character of the business and the litigation and your knowledge of their services as general attorneys, in connection with similar duties on the branch extending from Garrett to Roberts, on the 227 miles of railroad, what in your judgment would be a fair compensation for these services?

A. Am not advised as to the nature and extent of business on the eastern branch. I don't think $3,000 a year would be excessive; I consider the fact that there is a great multiplicity of matters other than simply turning over lawsuits to local counsel, entailing a great deal of responsibility which they have, that takes time and thought, and would make a large bulk of work in the course of the period mentioned. I don't think that general attorneys assuming this responsibility for the part of the road which I have knowledge of, that $3,000 a year would be excessive. I don't know of the business on the eastern branch; I know that it is not earning a great deal.

JAMES A. BAKER, JR., sworn:

I will state that since my connection with the firm of Baker, Botts & Baker, I have had charge of the finances of the firm and it

has devolved on me to receipt for money paid by the railway company to our firm, I have generally done so by receipting at the treasurer's office or the assistant treasurer's office. At the time these vouchers were issued, one on Texas Central heads and the other on Houston & Texas Central heads, the former for $83.33 and the latter for $416.66, I had a conversation with Mr. Cameron or some one of the officers of the railroad and asked why they issued them that way, that before they had issued a voucher for $500, they said they charged $5,000 a year to the Houston & Texas Central and $1,000 to the Texas Central. They made the division between the Texas Central and the Houston & Texas Central, it was immaterial to us, we were getting the $500 a month, but we called attention to it at the time.

Q. Anything said about your consenting to that coming out of your compensation in the Texas Central?

A. It was understood we were to get $6,000, we did not assent to it in any way at all as consenting that that portion that was
139 paid us on Texas Central heads was to be paid by the Texas Central, it was a matter between the Houston & Texas Central and the Texas Central.

Cross-examined:

Q. When was this?
A. Prior to the receivership.
Q. It has been paid so all through the receivership?
A. Yes, sir.

By the MASTER:

Q. Your position is, that it was a decision between the two railroads for their own convenience, with which you have nothing to do?

A. Yes, sir; our contention is, that the Texas Central has not paid us anything whatever and not that the Houston & Texas Central owes us anything.

I, J. E. Oldright, hereby certify that the foregoing is a correct transcript of the oral testimony adduced on the hearing of the matter of compensation under decree of April 11, 1887, master's No. 321, heard at Houston June 8th, 1891.

(Signed) J. E. OLDRIGHT,
Stenographer to Sp'l Master.

Testimony adduced at an adjourned hearing at Waco, on July 6th, 1891, relative to the matter of compensation of solicitors, &c., as provided in decree of April 11th, 1887, in equity cases 21 and 33, this hearing having reference to the matter of compensation of the Metropolitan Trust Company and its counsel.

Present: L. C. Alexander, Esq., and M. F. Mott, Esq.

F. L. DYER sworn.

Q. You are a practising attorney?
A. Yes, sir.
Q. How long have you been practising?
A. Since 1874.
Q. Have you been practising in railroad litigation a good deal?
A. Yes, sir; I have had considerable practice in that line for a number of years past.
Q. You have been attorney for what roads?
140 A. Attorney for the Cotton Belt road as originally organized up to the time it went into the hands of the receivers, and through the receivership and local attorneys for the Missouri, Kansas & Texas railroad.
Q. You were attorney for that company in connection with the receivership pending in the United States circuit court?
A. Yes, sir; local as to that one and general as to the St. Louis, Arkansas & Texas.
Q. This is a suit under the original bill of complaint by the Morgan's Louisiana & Texas Railroad & Steamship Company against The Texas Central Railway Company, in which plaintiff claims an equitable demand of about $800,000, and in which it is alleged the Texas Central Railway Company contemplated the issuance of over two millions of dollars of bonds, and alleging that a mortgage was made to the Metropolitan Trust Company and had been recorded in many of the counties through which the road passed, but in some it was not recorded, and for that reason the Metropolitan Trust Company refused to certify the bonds named in the allegation and the facts were so found by decree of the court. The original bill of complaint alleges that notes had been issued for a large sum based upon the contemplated issuance of these bonds; the Metropolitan Company was made a party to the suit for the purpose, I suppose, of vacating that mortgage and adjusting the rights of the parties when suit was brought and the receivership commenced.
You have heard the affidavit of Mr. Hillhouse read in evidence, and while it is not yet proved what local counsel did in the case, assuming that he appeared at the hearing, could you form an estimate of what would be reasonable compensation for the trustees and their attorneys?
A. For their services, I think $2,000 or $2,500 would be reasonable compensation, embracing, as it does, so large a scope of investigation and considering the questions involved.

Cross-examination:

Q. Have you any connection with this suit yourself?
A. No connection whatever.

141 It is admitted that Judge L. C. Alexander appeared at the hearing of the final decree that was made in this case.

L. C. ALEXANDER examined by Major M. F. Mott:

Q. Was not the Metropolitan Trust Company a party defendant by the intervention of Morgan's Louisiana & Texas Railroad & Steamship Company in the original bill of complaint?
A. It was.
Q. Is it not a fact that the Metropolitan Trust Company was a trustee of the second mortgage?
A. Yes, sir; I think it was, the bill will show and the finding of the court.

I, J. E. Oldright, hereby certify that the foregoing is a correct transcript of the testimony adduced at the adjourned hearing in the matter of the compensation of the Metropolitan Trust Company & their counsel in equity causes 21 and 33.

J. E. OLDRIGHT,
Stenographer to Special Master.

Approved:
JOHN G. WINTER, *Master.*

Endorsed as follows: No. 21 and 33. Equity. United States circuit court, Waco. Master's consolidated No., 321. Report of test on compensation *in* heard at Houston June 8th, and at Waco July 6th, 1891. Filed August 25th, 1891. J. H. Finks, clerk.

Affidavit of Mott.

United States Circuit Court, Northern District of Texas.

In the Matter of Reference to Report Compensation to be Allowed in the Matter of the Receivership of the Texas Central Railway.

Before the Hon. John G. Winter, master.

Depositions of M. F. Mott.

I am one of the law firm of Willie, Mott and Ballinger; I was also a member of the law firms of Ballinger, Mott and Terry and Ballinger Mott and Ballinger, and Mott & Ballinger. The law firm of Ballinger, Mott and Terry in the year 1885 was associated with the firms of Turner, Lee and McClure and Turner, McClure
142 & Ralston as representing the interests of the bondholders of the Farmers' Loan and Trust Company, their trustees Judge Ballinger of the firm of Ballinger, Mott & Terry, participated actively in all litigation during his lifetime, attended court and made arguments at Waco, attended before the master, examined witnesses and formulated objections and exceptions.

He also assisted in preparation of the pleadings in the cases and was engaged in active correspondence with the leading counsel in New York up to the day of his death. I referred to the affidavit of Herbert B. Turner and to the memorandum connected therewith on file or to be filed herein, for the purpose of showing more specifically the services rendered by said firms. I also make a reference to the records of this case in this connection, and ask that they may be considered in evidence for the purpose of showing the services rendered. I consider the services rendered by the firm of Ballinger, Mott & Terry, Ballinger, Mott & Ballinger, and Mott & Ballinger to be fairly and justly worth ten thousand dollars, and I ask that said sum be allowed to the former firms of Ballinger, Mott & Terry, Ballinger, Mott & Ballinger, and Mott & Ballinger.

After the death of Judge Ballinger the business was conducted for a few months by Mr. Thomas J. Ballinger and myself under the firm name of Mott & Ballinger, and after March, 1888, by the firm of Willie, Mott & Ballinger. Said firms continued corresponding with Turner, McClure and Rolston in relation to the matter and gave the necessary attention to the conduct of the litigation in Texas, wrote letters, gave written legal opinions, attended masters' courts, made objections, etc. I would state here that Mr. Turner of the firm of Turner, McClure & Rolston gave personal attention to the case in the Supreme Court of the United States and our firm did not brief the case or have any connection with it in that court. I attended the sale at Waco, made the motion for confirmation of sale and obtained the order therefor. My firm is now engaged in attending the masters' court in matters of compensation and will be engaged in the cause in all of the phases and branches in Texas and until the same is finally ended and disposed of. I also
143 refer to the affidavit of Mr. Turner and to the records of this cause to show what the new firm has done and what it will have to do before it ceases its connection with the business. The services rendered by the firm of Willie, Mott & Ballinger and to be tendered by them are reasonably worth the sum of five thousand dollars and I ask the allowance of this sum accordingly.

In the matter of the allowance of compensation to my firms I respectfully refer to the personal knowledge of the court and of the master as to the amount and value of the services rendered by us.

M. F. MOTT.

Sworn to and subscribed before me this 6th day of June, 1891.

[SEAL.] ASA H. WILLIE, JR.,
Notary Public, Galveston Co., Texas.

Endorsed: Filed June 8th, 1891. John G. Winter, special master. Filed August 25, 1891. J. H. Finks, clerk.

Report of Master upon Accounts of Receivers Texas Central Railway Company for the Months of January, February, and March, 1891.

In the United States Circuit Court for the Northern District of Texas, at Waco.

Master's No., 323.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
} No. 21. In Chancery.

To the honorable the judges of said court:

Benjamin G. Clarke and Charles Dillingham, joint receivers in this cause, on the 9th day of June, 1891, in compliance with orders of court herein made, filed with me their accounts as such receivers, for the months of January, February and March, 1891.

144 After notices duly extended, the reference came on to be heard at my office in the city of Houston, Texas, on the second Monday in July, 1891, when appeared Mr. M. F. Mott and Mr. W. B. Botts, solicitors as of record. There were no objections or exceptions made to any item of said accounts, and they were submitted for report. After an examination of said accounts, I have approved and passed the same as filed.

I hereto attach as "Exhibit A" the statement of the receivers filed with me, showing cash receipts and disbursements for the period above mentioned. This statement, with schedules "A" to "J" inclusive, accompanying the same are herewith filed, and together with the vouchers appertaining thereto, constitute the accounts so filed with me.

The schedules are voluminous, and to avoid printing are not made exhibits.

I have stamped the vouchers "Passed Jul- 13, 1891," and left them in the custody of the receivers under arrangements for convenient reference and examination when desired.

I have also examined, under oath, Mr. H. Hall, auditor for the receivers, relative to the correctness of said accounts, and I herewith file a report of his testimony.

Respectfully submitted.

JOHN G. WINTER,
Special Master.

Cash Receipts and Disbursements from January 1, 1891, to March 31, 1891, Inclusive.

Receipts.

Balance remaining on hand at date of last report....		$15,824 06
Receivers' accounts.		
Current freight and passenger revenue, as per Schedule A.....	$70,610 13	
Ticket and mileage balances, Schedule B.	592 43	
Rents, etc., Schedule C.....	217 50	
145 Bills receivable and interest, Schedule D.....	1,841 69	
Miscellaneous, Schedule E.....	17,881 13	
		91,142 88
		$106,966 94

Disbursements.

Receivers' accounts:		
Ticket and mileage balances as per Schedule F...	$2,711 92	
Vouchers, Schedule G.....	50,157 90	
Taxes, Schedule H	377 12	
Pay-rolls, Schedule I.....	9,329 86	
Auditor's pay checks, Schedule J.....	42,207 45	
		$104,784 25
Bal. remaining on hand Ap'l 1, 1891.....		2,182 69
		$106,966 94

H. HALL, *Auditor.*

Exhibit "A." No. 21. U. S. circuit court, Waco, Texas. Morgan's La. R. R. & S. S. Co. *et al. vs.* Texas Central Railway Co. Filed June 9, 1891.

Master's No., 323.

JOHN G. WINTER,
Special Master.

Endorsed: No. 21. In chancery. United States circuit court, northern district of Texas, at Waco. Morgan's Louisiana & Texas Railroad & Steamship Company *et al. vs.* The Texas Central Railway Company *et al.* Master's No., 323. Master's report upon accounts of receivers for the months of January, February and March, 1891. Filed July 18, 1891. J. H. Finks, clerk, by C. A. Richardson, deputy.

146 *Report of Master upon Accounts of Receivers of The Texas Central Railway Company for the Months of April, May, and June*, 1891.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Master's No., 326.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
} No. 21. In Chancery.

To the honorable the judges of said court:

In compliance with orders heretofore entered in this cause, Benjamin G. Clarke and Charles Dillingham, joint receivers, on the 21st day of July, 1891, filed with me their accounts as such receivers for the months of April, May and June, 1891.

After notice duly extended the reference came on to be heard at my office, in the city of Houston, Texas, on the 10th day of August, 1891. There was no appearance of parties, nor were there any objections or exceptions to the accounts or any item thereof. Having previously examined the accounts and the vouchers relating thereto, I have approved and passed the same.

The statement of cash receipts and disbursements hereto attached as "Exhibit A," together with the Schedules "A to J," and the vouchers appertaining to the several items of expenditure set forth in the schedules constitute the account. I herewith file the schedules, but to avoid printing do not make them exhibits. I have stamped each voucher, "Passed Aug. 10, 1891," and deposited them in the vaults of the receivers, under arrangements for ready reference and examination when desired.

I herewith file a report of the testimony of H. Hall, auditor for the receivers, relative to the correctness of the accounts, etc.

Respectfully submitted. JOHN G. WINTER,
Special Master.

147 *Cash Receipts and Disbursements from April 1, 1891, to June 30, 1891, Inclusive.*

Receipts.

Balance remaining on hand at date of last report.....		$2,182 69
Receivers' accounts:		
Current freight and passenger revenue, as per Schedule A.....	$68,837 25	
Ticket and mileage balances, Schedule B..	192 75	
Rents, etc., Schedule C.....	248 50	
Bills receivable and interest, Schedule D..	1,359 46	
Miscellaneous, Schedule E...	6,352 99	
		76,990 95
		$79,173 64

Disbursements.

Receivers' accounts:		
Ticket and mileage balances, as per Schedule F	$1,153 24	
Vouchers, Schedule G	27,062 92	
Taxes, Schedule H	153 03	
Pay-rolls, Schedule I	9,011 15	
Auditor's pay checks, Schedule J	36,247 91	
		73,628 25
Bal. remaining on hand July 1, 1891		5,545 39
		$79,173 64

H. HALL, *Auditor.*

Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Texas Cent. Railway Co. 21. In chancery. U. S. circuit court, Waco, Texas. Master's No., 326. Exhibit "A." Filed July 21, 1891. John G. Winter, special master.

Endorsed: No. 21. In chancery. Master's No., 326. United
148 States circuit court, at Waco. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Tex. Cent. R'y Co., Waco. Master's report on receivers' accounts, April, May, and June, 1891. Filed Aug. 12, 1891. J. H. Finks, clerk, by C. A. Richardson, deputy.

Report of Master upon Accounts of Receivers Texas Central Railway Company for Quarter Ending September 30, 1891.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Master's No., 327.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company *vs.* THE TEXAS CENTRAL RAILWAY COMPANY *et al.*	No. 21. In Chancery.

To the honorable the judges of said court:

On the 30th day of October, 1891, the receivers in this cause, Benjamin G. Clarke and Charles Dillingham, in compliance with orders of court, filed with me a statement of their accounts as such receivers from July 1 to September 30, 1891, inclusive, with Schedules A to M, inclusive, showing items of expenditures, together with vouchers therefor.

After notices duly extended, the reference came on to be heard at my office in the city of Houston, on the 9th day of November, 1891. There was no appearance of parties by counsel or otherwise, neither was there made any objections or exceptions to said accounts, or any item thereof.

I hereto attach as Exhibit A the statement of said receivers showing cash receipts and disbursements, and I herewith file the aforementioned schedules. The schedules are voluminous, and to avoid printing are not made exhibits. I have stamped the vouchers, "Passed December 9, 1891," and left them in the custody of
149 the receivers for safe deposit in their vaults, and under convenient arrangements for reference and examination when desired. After an examination of said accounts, schedules and vouchers, I have, in the absence of objections or exceptions, approved and passed the same. I herewith file a report of the testimony of H. Hall, auditor for said receivers, relative to said accounts and their correctness.

Respectfully submitted.

JOHN G. WINTER,
Special Master.

Cash Receipts and Disbursements from July 1, 1891, *to September* 30, 1891, *Inclusive.*

Receipts.

Cash remaining on hand at date of last report		$5,545 39
Receivers' accounts:		
Current freight and passenger revenue, as per Schedule A	$59,238 62	
Ticket and mileage balance, as per Schedule B	387 24	
Rents, as per Schedule C	217 50	
Bills receivable and interest, as per Schedule D	1,830 89	
Miscellaneous, as per Schedule E	36,210 48	
Purchasing-committee bondholders, as per Schedule F	120,000 00	
		217,884 73
		$223,430 12

Disbursements.

Receivers' accounts:		
Ticket and mileage balances, as per Schedule G	$1,254 01	
Vouchers, as per Schedule H	79,087 44	
Taxes, as per Schedule I	160 13	
Pay-rolls, as per Schedule J	8,241 61	
Auditor's pay checks, as per Schedule K	36,946 12	
Receivers' certificates and interest,		
150 as per Schedule L	26,276 31	
Interest, discount, and exchange, as per Schedule M	166 03	
		$152,131 65
Balance on hand Oct. 1, 1891		71,298 47
		$223,430 12

H. HALL, *Auditor.*

Exhibit A. No. 21. In equity. U. S. C. C., Waco. Master's No., 327. Filed October 30, 1891. John G. Winter, special master.

Filed January 7, 1892.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy*.

Report of Master upon Accounts of Receivers Texas Central Railway Company for Quarter Ending December 31, 1891.

In the United States Circuit Court for the Northern District of Texas, at Waco.

Master's No., 329.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company *vs.* THE TEXAS CENTRAL RAILWAY COMPANY *et al.*	No. 21. In Chancery.

To the honorable the judges of said court:

On the 25th day of February, 1892, Benjamin G. Clark and Charles Dillingham, receivers in this cause, in compliance with orders of the court, heretofore entered, filed with me a statement of their accounts as such receivers from October 1st to December 31st, 1891, inclusive, with Schedules A to L, inclusive, showing items of receipts and expenditures, together with vouchers therefor.

After notices duly extended, the reference came on to be
151 heard at my office in the city of Houston, on the 14th day of March, 1892; there being no appearance of parties, the further consideration of the matters involved was adjourned to the 12th day of April, 1892, and on that day was again called.

There being no appearance of parties by counsel or otherwise, neither was there made any objections or exceptions to said accounts, or any item thereof, whereupon I took the same under advisement for report without further notice.

I hereto attach as Exhibit A the statement of said receivers showing cash receipts and disbursements for the period named, and herewith file above-mentioned schedules. The schedules are voluminous, and to avoid printing are not made exhibits. I have stamped the vouchers, "Passed April 12th, 1892," and left them in the custody of the receivers for safe deposit in their vaults, and under convenient arrangements for reference and examination when desired. After an examination of said accounts, schedules and vouchers, I have, in the absence of objections or exceptions, approved and passed the same.

Respectfully submitted.

JOHN G. WINTER,
Special Master.

Cash Receipts and Disbursements from October 1, 1891, to December 31, 1891, Inclusive.

Balance remaining on hand at date of last report.....		$71,298 47
Receipts.		
Receivers' accounts:		
Current freight and passenger revenue, as per Schedule A.....	$7,970 98	
Ticket and mileage balance, as per Schedule B.....	168 46	
Rents, as per Schedule C.....	47 00	
Bills receivable and interest, as per Schedule D.....	3,879 23	
Miscellaneous, as per Schedule E.....	8,944 86	
		21,010 53
		$92,309 00
152 **Disbursements.**		
Receivers' accounts:		
Ticket and mileage balances, as per Schedule F.....	$561 33	
Vouchers, as per Schedule G.....	18,409 43	
Taxes, as per Schedule H.....	1,989 19	
Pay-rolls, as per Schedule I.....	14,865 85	
Auditor's pay-checks, as per Schedule J.....	1,250 07	
Traffic balances, as per Schedule K.....	14,280 50	
Purchasers Texas Central railway, per Schedule L.....	267 58	
		$51,623 95
Balance on hand Jan. 1, 1892.....		40,685 05
		$92,309 00

H. HALL, *Auditor.*

Exhibit A. No. 21. In equity. U. S. C. C., Waco. Master's No., 329. Filed February 25, 1892. John G. Winter, special master.

Filed June 2, 1892.

J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

(1892, l.)

Report of Master upon Accounts of Receivers Texas Central Railway Company for Quarter Ending March 31, 1892.

In the United States Circuit Court for the Northern District of Texas, at Waco.

Master's No., 330.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
No. 21. In Chancery.

153 To the honorable the judges of said court:

On the 26th day of May, 1892, Benjamin G. Clark and Charles Dillingham, joint receivers in this cause, in compliance with orders of court, heretofore entered, filed with me a statement of their accounts as such receivers from January 1, to March 31, 1892, inclusive, with Schedules A to J, inclusive, showing items of receipts and disbursements, together with vouchers therefor.

After notices duly extended, the reference came on to be heard at my office in the city of Houston, on the 12th day of July, 1892; and the reference being duly called and there being no appearance of parties by counsel or otherwise, or objections or exceptions to said accounts, or any item thereof, I took the same under advisement for report without further notice.

I hereto attach as Exhibit A the statement of the receivers showing cash receipts and disbursements for the period named, and herewith file above-mentioned schedules. The schedules are voluminous, and to avoid printing are not made exhibits. After an examination of said accounts, schedules and vouchers, I have, in the absence of objections or exceptions, approved and passed the same. I have stamped the vouchers, "Passed July 12th, 1892," and left them in the custody of the receivers for safe deposit in their vaults, and under convenient arrangements for reference and examination when desired.

Respectfully submitted.

JOHN G. WINTER,
Special Master.

Cash Receipts and Disbursements from January 1, 1892, *to March* 31, 1892, *Inclusive.*

Balance remaining on hand at date of last report			$40,685 05
Receipts.			
Receivers' accounts:			
Ticket and mileage balance, as per Schedule A		$34 32	
154 Rents, as per Schedule B		3 00	
Bills receivable and interest, as per Schedule C		2,387 40	
Miscellaneous, as per Schedule D		1,234 51	
			3,658 87
			$44,343 92
Disbursements.			
Receivers' accounts:			
Agents, as per Schedule E		357 95	
Ticket and mileage balances, as per Schedule F		42 11	
Vouchers, as per Schedule G		5,920 11	
Taxes, as per Schedule H		41 86	
Pay-rolls, as per Schedule I		202 87	
Auditor's pay-checks, as per Schedule J		10 20	
			$6,575 10
Balance on hand April 1, 1892			37,768 82
			$44,343 92

H. HALL, *Auditor.*

Exhibit A. No. 21. In Equity. U. S. C. C., Waco. Master's No., 330. Filed May 26, 1892. John G. Winter, special master.

Filed July 28, 1892.

J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

Report of Special Master upon Accounts of Receivers of the Texas Central Railway Company for Quarter Ending June 30th, 1892.

In the United States Circuit Court for the Northern District of Texas, at Waco.

Master's No., 331.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY CO. ET AL. } No. 21. In Chancery.

155 To the honorable the judges of said court:

On the 2d of September, 1892, Benjamin G. Clarke and Charles Dillingham, joint receivers in this cause, filed with me a statement of their accounts as by order of court required for the months of April, May and June, 1892, with Schedules A to G, inclusive, showing items of receipts and disbursements together with vouchers therefor.

After notices duly extended, the reference came on to be heard at my office in the city of Houston, on the 13th day of September 1892; and the reference being duly called and there being no appearance of parties by counsel or otherwise, or objections or exceptions to said accounts, or any item thereof, I took the same under advisement for report without further notice.

I hereto attach as Exhibit A the statement of the receivers showing cash receipts and disbursements for the period named, and herewith file above-mentioned schedules. The schedules are voluminous, and to avoid printing are not made exhibits. After an examination of said accounts, schedules and vouchers and they appearing to be correct, I have, in the absence of objections or exceptions, approved and passed the same. I have stamped the vouchers, "Passed September 13th, 1892," and left them in the custody of the receivers for safe deposit in their vaults, and under convenient arrangements for reference and examination when desired.

Respectfully submitted. JOHN G. WINTER,
Special Master.

Cash Receipts and Disbursements from April 1st, 1892, to June 30th, 1892, Inclusive.

Balance remaining on hand at date of last report.....		37,768 82
Receipts.		
Receivers' accounts:		
Freight and passenger revenue as per Schedule A.....	$134 46	
156 Bills receivable and interest, as per Schedule B.....	1,731 47	
Rents, as per Schedule C	4 00	
Miscellaneous receipts, as per Schedule D.....	621 59	
		2,491 52
		$40,260 34

Disbursements.

Receivers' accounts:

Ticket and mileage balances, as per Schedule E.	10 03	
Vouchers, as per Schedule F.....	862 87	
Pay-rolls, as per Schedule G...	20 50	
		$893 40
Balance remaining on hand.		39,366 94
		$40,260 34

H. HALL, *Auditor.*

Exhibit A. No. 21. In equity. U. S. C. C., Waco. Master's No., 331. Filed September 2, 1892. John G. Winter, special master.

Filed October 8, 1892.

J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

Report of Special Master upon Accounts of Receivers of the Texas Central Railway Company for the Months of July, August, and September, 1892.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Master's No., —.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company *vs.* THE TEXAS CENTRAL RAILWAY COMPANY *et al.* } No. 21. In Chancery.

157 To the honorable the judges of said court:

On the — day of December, 1892, Benjamin G. Clark and Charles Dillingham, joint receivers in this cause, filed with me a statement of their accounts for the months of July, August and September, 1892, with Schedules A to F, inclusive, showing items of receipts and disbursements for the period named, together with vouchers therefor.

After notices duly to counsel, the reference came on to be heard at my office in the city of Houston, on the 13th day of January, 1893, and the reference being then and there duly called, and there being no appearance of parties by counsel or otherwise, or objections or exceptions to said accounts, or any item thereof, I took the same under advisement for report without further notice.

I hereto attach Exhibit "A," the statement of the receivers, showing the cash receipts and disbursements for the period named, and herewith file the above-mentioned schedules.

After an examination of said accounts, schedules and vouchers, they appearing to be correct, I have, after examining under oath J. C. Kidd, auditor for said receivers, as to the correctness of said accounts, in the absence of objections or exceptions, approved and passed the same. I have stamped the vouchers "Passed April 18th, 1893," and left them in the custody of the said auditor for said receivers, under convenient arrangements for reference and examination when desired.

Respectfully submitted.

JOHN G. WINTER,
Special Master.

Cash Receipts and Disbursements from July 1st, 1892, to September 30th, 1892, Inclusive.

Balance remaining on hand at date of last statement....		$39,366 94
Receipts.		
Receivers' accounts:		
Current freight receipts, as per Schedule A....	$2 80	
Bills receivable and interest, as per Schedule B	1,261 20	
Miscellaneous accounts, as per Schedule C.....	321 78	
		1,585 78
		$40,952 72
Disbursements.		
Receivers' accounts:		
Pay-rolls, as per Schedule D	$157 15	
Ticket and mileage balance, as per Schedule E.	9 67	
Vouchers, as per Schedule F.....	727 14	
		893 96
Balance remaining on hand October 1, 1892....		$40,058 76

J. C. KIDD, *Auditor.*

Schedule "A." No. 21. Eq. Master's No., —. U. S. C. C., Waco. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Tex. Central R'y Co. Filed Dec. —, 1892. John G. Winter, special master.

Filed June 22, 1893.

J. H. FINKS, *Clerk.*

Report of Special Master upon Accounts of the Receivers of the Texas Central Railway Company for the Months of October, November, and December, 1892.

Master's No., 333.

United States Circuit Court for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
} No. 21. In Chancery.

To the honorable the judges of said court:

On the first day of April, 1893, Benjamin G. Clark and
159 Charles Dillingham, joint receivers in this cause, filed with me a statement of their accounts for the months of October, November and December, 1892, with Schedules A to F, inclusive, showing items of receipts and disbursements for the period named, together with the vouchers therefor.

After notices duly extended to counsel the reference came on to be heard at my office in the city of Waco, on the third of July, 1893, and the reference being then and there duly called, and there being no appearance of parties, by counsel or otherwise, or objections or exceptions to said accounts or any item thereof, I took the same under advisement for report without further notice.

I hereto attach as Exhibit "A" the statement of the receivers, showing the cash receipts and disbursements for the period named, and herewith file the above-mentioned schedules.

Having examined said accounts, schedules and vouchers, and they appearing to be correct, and having examined under oath J. C. Kidd, auditor for said receivers, as to the correctness of said accounts, I have, in the absence of objections or exceptions, approved and passed the same.

I have endorsed the vouchers, "Passed July 3rd, 1893," and left them in the custody of the said auditor, under convenient arrangements for reference and examination when desired.

Respectfully submitted.

JOHN G. WINTER,
Special Master.

Cash Receipts and Disbursements from October 1st, 1892, to December 31st, 1892, Inclusive.

Balance remaining on hand at date of last report.....		$40,058 76
Receipts.		
Receivers' accounts:		
Agents for account freight, as per Schedule A.....	$49 05	
160 Miscellaneous receipts, as per Schedule B.....	138 55	
Bills receivable and interest, as per Schedule C.....	3,759 29	
		3,946 89
		$44,005 65
Disbursements.		
Receivers' accounts:		
Ticket and mileage balances, as per Schedule D.....	$11 26	
Vouchers, as per Schedule E..... ..	710 28	
Taxes, as per Schedule F.....	1,759 73	
		$2,481 27
Balance remaining on hand July 1, 1893.....		41,524 38
		$44,005 65

Exhibit A. Court No., 21. Master's No., 333. U. S. circuit court, Waco. Morgan's R. R. & S. S. Co. *vs.* Texas Central R'y Co. Filed April 1st, 1893.

JOHN G. WINTER,
Special Master.

Endorsed: Court No., 21. Master's No., 333. U. S. circuit court, Waco. Morgan's Louisiana & Tex. R. R. & S. S. Co. *vs.* Texas Central R'y Co. *et al.* Receivers' accounts for Oct., Nov. and Dec., 1892. Master's report. Filed July 14th, 1893. J. H. Finks, clerk, by C. A. Richardson, deputy.

(1893.—M.)

Report of Master upon Accounts of Receivers Texas Central Railway Company for the Months of January, February, and March, 1893.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Master's No., 335.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
No. 21. In Chancery.

161 To the honorable the judges of said court:

On the 27th of June, 1893, Benjamin G. Clarke and Charles Dillingham, joint receivers in this cause, in compliance *of* orders of court so requiring, filed with me a statement of their accounts for the months of January, February and March, 1893, together with schedules of items A to F inclusive, with verifying vouchers therefor. After notices duly extended to Messrs. Baker, Botts, Baker & Lovett, Messrs. Farrar, Jonas & Kruttschnitt, Messrs. Alexander & Campbell, and F. Mott, Esq., counsel as of record, the reference was called at my office in the city of Waco, at 10 o'clock a. m., July 3, 1893. Messrs. Alexander & Campbell advised me that they were not interested in the reference, and declined to appear. There was no other appearance of counsel or parties, wherefore I adjourned the reference to the 19th of September, 1893. There was no appearance at the hearing so adjourned, and therefore I took the matters concurrent under advisement for report.

I hereto attach as Exhibit A the statement filed with me showing receipts and disbursements for the period named, which statement and the schedule and vouchers above referred to constitute the accounts filed with me as aforesaid.

I have examined the several statements, schedules and vouchers aforesaid, and they appearing to be correct, I have in the absence of any exceptions or objections approved and passed the same.

I herewith file the schedules and vouchers appertaining to said accounts, and have endorsed each voucher "Passed September 19, 1893."

Respectfully submitted.

JOHN G. WINTER,
Special Master, &c.

Cash Receipts and Disbursements from January 1, 1893, to March 31, 1893, Inclusive.

Balance remaining on hand at date of last report.....		$41,524 38
162 Receipts.		
Receivers' accounts:		
Bills receivable and interest, as per Schedule A	$1,721 45	
Miscellaneous accounts, as per Schedule B.	806 47	
Rents, as per Schedule C.....	19 20	
Taxes, as per Schedule D.....	9 07	
		2,556 19
		$44,080 57
Disbursements.		
Receivers' accounts:		
Mileage balance, as per Schedule E.....	$1 11	
Audited vouchers, as per Schedule F.....	1,897 93	
		$1,899 04
Balance on hand April 1, 1893.....		$42,181 53

J. C. KIDD,
Fr't Auditor.

Exhibit A. No. 21. Eq. U. S. cir. ct., Waco. Morgan's R. R. & S. S. Co. *vs.* Tex. Cent. R'y Co. Filed June 27, 1893.

JOHN G. WINTER,
Master, etc.

Endorsed: No. 21. Equity. Master's No., 335. Morgan's R. R. & S. S. Co. *vs.* Texas Central R'y Co. *et al.* U. S. C. C., Waco. Receivers' accounts for quarter ending March 31, 1893. Master's report. Filed July 13, 1894. J. H. Finks, clerk, by C. A. Richardson, deputy.

163 *Report of Master upon Accounts of Receivers Texas Central Railway Company for the Quarter Ending June 30, 1893*

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Master's No., 336.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company *vs.* THE TEXAS CENTRAL RAILWAY COMPANY *et al.*	No. 21. In Chancery.

To the honorable the judges of said court:

On the 23d of August, 1893, Benjamin G. Clarke and Charles Dillingham, receivers in this cause, in compliance — orders of court

entered therein, filed with me a statement of their accounts as such receivers from April 1, 1893, to June 30, 1893, with schedules of items A to F inclusive, together with vouchers for all expenditures.

After notices duly extended to Messrs. Baker, Botts, Baker & Lovett, Messrs. Farrar, Jonas & Kruttschnitt, M. F. Mott, Esq., and L. W. Campbell, Esq., the reference came on regularly to be heard at my office in the city of Waco, on the 19th September, 1893. There was no appearance of parties by counsel or otherwise, neither was there any objections or exceptions to said accounts or any items thereof.

Whereupon I took the accounts under advisement for examination and report. I have examined the statements, schedules and vouchers constituting the accounts aforesaid, and they appearing to be correct, I have in the absence of objections or exceptions approved and passed the same.

I hereto attach as Exhibit A the statements of the receivers showing cash receipts and disbursements, and I herewith file the schedules and vouchers appertaining thereto. I have endorsed the vouchers "Passed September 19, 1893."

Respectfully submitted.

JOHN G. WINTER, *Master.*

164 *Cash Receipts and Disbursements from April 1st, 1893, to June 30, 1893.*

Balance remaining on hand as per last report		$42,181 53
Receipts.		
Receivers' accounts:		
Bills receivable and interest, as per Schedule A	$1,841 81	
Rents, etc., as per Schedule B	4 00	
Miscellaneous accounts, as per Schedule C	861 83	
		2,707 64
		$44,889 17
Disbursements.		
Receivers' accounts:		
Mileage balance, as per Schedule D	$0 59	
Pay-rolls, as per Schedule E	4 60	
Vouchers, as per Schedule F	481 39	
		$486 58
Balance remaining on hand July 1, 1893		44,402 59

J. C. KIDD,
For Auditor.

Endorsed: No. 21. Equity. U. S. cir. ct., at Waco. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Tex. Central R'y Co. *et al.* Receivers' accounts for April, 1893. Filed July 13th, 1894. J. H. Finks, clerk, by C. A. Richardson, deputy.

165 *Report of Master upon Accounts of Receivers of the Texas Central Railway Company for the Months of July, August, and September*, 1893.

Master's No., 337.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
No. 21. In Chancery.

To the honorable the judges of said court:

In compliance with orders of court entered in this cause, Charles Dillingham and Benjamin G. Clarke, receivers herein, on the 3d day of March, 1894, filed with me their accounts for the quarter ending September 30, 1893, which accounts consist of a statement of receipts and disbursements for the period named, with Schedules "A," "B," "C" and "D," showing items of expenditure, together with vouchers therefor.

I hereto attach as "Exhibit A," the statement referred to, and I herewith file the schedules and vouchers accompanying the same. At the time when the accounts were filed with me, J. G. Walker presented to me an application to be allowed fifteen dollars per month for services rendered to the receiver as "voucher clerk," from December 1, 1891, to December 31, 1893. I duly extended notice to Messrs. Baker, Botts, Baker & Lovett, Messrs. Farrar & Kruttschnitt, M. F. Mott, Esq., and L. W. Campbell, Esq., counsel as of record, and to Receiver Dillingham, of the filing of the accounts and the application above mentioned, and that I would call the same for hearing at my office in the city of Waco, on the 14th day of May, 1894. The matters referred to were duly called in pursuance of such notices so extended. There was no appearance of parties by counsel or otherwise, other than L. W. Campbell, Esq.,
166 who appeared as the attorney for the Texas Central Railroad Company and Charles Moran, Henry K. McHarg and Cornelius B. Gold, "purchasing trustees." Mr. Campbell joined with me in an examination of the accounts aforesaid, and stated that he had no objections or exceptions to make thereto, except as to the two items of one hundred and fifty dollars each for salary paid to Receiver Dillingham for the months of April and May, 1893, and that he likewise objected to the allowance asked by J. G. Walker aforesaid. Mr. Campbell duly formulated his objections and filed them with me, whereupon I set down said objections and exceptions to be heard at my office aforesaid on the 19th day of May, 1894, and gave notice thereof to Mr. Campbell, Receiver Dillingham and to counsel above named, and also to applicant Walker.

On the said 19th of May the reference *were* duly called for the

consideration of the aforesaid objections and exceptions, when appeared Mr. Campbell and Receiver Dillingham, with his attorney, Mr. Parker. Mr. Walker requested that the consideration of his application be postponed to a future day to be named, which was assented to by contestant and it was accordingly so ordered.

The hearing then proceeded upon the exceptions to the two items of salary paid to Receiver Dillingham. Mr. Parker, as attorney for said receiver, objected that the contestants, The Texas Central Railroad Company and the said "purchasing trustees" are not such parties to the litigation before the court, and have no such interest in the property now in the hands of the receivers and still in controversy as entitles them, or either of them, to interpose the said exceptions. From the record and proceeding in this cause, more particularly hereinafter referred to, it appears that the only parties who are interested in the estate now in the custody of the receivers Clark and Dillingham, and concerning which they account, are the complainant, The Morgan Company and The Farmers' Loan and Trust Company, one of the defendants, and the defendant Texas Central Railway Company, nevertheless it also appears that the contestants have become parties to the suit, and while they appear to be parties for certain purposes not involving the property now in the immediate custody of the receivers, yet I deemed it best that the question raised by Mr. Parker go before the court with
167 all the facts, rather than upon a naked denial by the master of the right of contestants to be heard as to their objections and exceptions aforesaid. The denial of such right by the master would probably necessitate a recommit-al of the reference should the court hold such ruling to be erroneous, and for that reason alone, under my appreciation of the status of the case, I overruled Mr. Parker's objection and allowed the contestants to appear. To this ruling by the master, Mr. Parker duly excepted.

I find from the record in this cause that the receivers Clark and Dillingham, on the 4th of April, 1885, went into possession of all the properties of the defendant, The Texas Central Railway Company, under an order of court appointing them such receivers; that Receiver Dillingham was the active managing receiver, residing in Houston, Texas, Mr. Clarke being a resident of the city of New York.

I find that the property of the said railway company, which vested in the receivers, consisted of the railway proper, with its outfit of locomotives, cars, depots, etc., with its franchises, etc., together with certain real estate of considerable value, consisting of town lots in various towns upon the line of said railway; that the mortgage lien of the Farmers' Loan & Trust Company covered the railway proper, with its franchises, etc., but did not embrace the real estate, town lots, etc., referred to; that the decree adjudging the various lines, rendered of date April 12, 1887, established the priority of that of the trust company upon the property covered by its mortgages, the railway proper, and gave judgment over in favor of both the trust company and the Morgan Company against the defendant railway company. That the decree appointed commissioners to sell

the property foreclosed under the trust company mortgages, to wit: the railway proper, its franchises, etc., but the remaining property in the hands of the receiver, to wit: the town lots, etc., was not embraced in such order of sale, but was left to be sold as under execution. The decree aforesaid was appealed from, and after several years was affirmed by the supreme court. After the determination of the appeal, to wit: in April, 1891, the commissioners appointed to
168 make the sale aforesaid sold the property covered thereby to the said Moran, McHarg and Gold, as "purchasing trustees." This sale was duly reported, and in November, 1891, was confirmed by the court. There was much delay, arising out of the question as to the use by the purchasers of bonds of the railway company in the payment of the purchase price, and the proceedings did not authorize a conveyance of the property so sold until January, 1893. On the 16th of that month the commissioners executed a conveyance to said purchasing trustees of the property sold and purchased as aforesaid. That deed conveyed only such property as was embraced in said mortgages to the trust company to wit: the railway track, appurtenances, franchises, &c., as aforesaid, but did not convey the property hereinbefore referred to as "town lots," etc. After the conveyance aforesaid to the "purchasing trustees" they in turn conveyed the property so purchased by them to the said Texas Central Railroad Company, a corporation organized for that purpose. In the month of September, 1891, pending the aforesaid conveyance by the commissioners to the "purchasing trustees," the receivers being duly advised, delivered to said trustees the railway and its equipment and turned over to them the management of the railway in the operation of trains and business generally of a common carrier. This relation to the property was thereafter assumed by the new corporation, the aforesaid Texas Central Railroad Company, which company it appears from proceedings in this cause is now operating said railway as the owner thereof, subject to orders of court pending the termination of the receivership.

I find that Receiver Dillingham has at all times continued to give and still gives his personal attention to the management of the estate of the defendant railway company remaining in the custody of the receiver, to wit: all of the estate of said company not conveyed to said "purchasing trustees" as hereinbefore stated. I find that by order of court of date December 4, 1886, Receiver Dillingham was allowed a monthly salary of one hundred and fifty dollars; that this salary has been paid to him since that time and that the items objected to and now under consideration were paid under the authority of that order. I find that the salary so paid has
169 been regularly reported to this court in the quarterly accounts of the receivers during all the period elapsed since said order was made; that those accounts have been regularly heard before the master, after due notice to counsel, and there has been no objection thereto by any parties to the suit, or otherwise, until the present instance. I find that the estate from which Receiver Dillingham receives compensation as aforesaid is not a part of the property purchased by the "purchasing trustees" and subsequently

conveyed to the Texas Central Railroad Company, but that such estate consists of property remaining in the custody and management of the receiver after the segregation of that conveyed to said trustees by the commissioners as aforesaid. I find that the parties to this litigation have taken no proceedings to close the receivership, but have refrained from so doing pending the adjustment of the claims of the trust company and the Morgan Company to the property so remaining in the hands of the receivers, and that they have, without objection, with full notice, acquiesced in the payment of the salary of Receiver Dillingham under the order of court allowing it to him as aforesaid.

I further find that under date of March 12, 1894, Henry K. McHarg, one of the said "purchasing trustees," addressed a letter to Receiver Dillingham, in substance expressing surprise that the receivers' accounts had not been closed, and requesting him to cooperate with M. F. Mott, Esq., counsel for the Farmers' Loan & Trust Company, with the view of closing the receivership; that upon receipt of this letter Receiver Dillingham did confer with Mr. Mott in relation thereto, advising him of his readiness to close the said accounts at any time; that he was informed by Mr. Mott that the suit was not in condition to be closed, and that the receivership could not be determined until the respective claims of the trust company and the Morgan Company to the property still in the hands of the receivers, were adjudicated and determined.

It appears from his letter referred to, that Mr. McHarg was cognizant of previous accounts filed by the receivers in which the payment of Receiver Dillingham's salary appears, and that he recognized that the receiver was "under pay" until discharged. With the exception of an item of six hundred dollars paid for
170 services in the auditing department, Receiver Dillingham has alone been "under pay," and no compensation has otherwise been paid or allowed inclusive of the accounts under consideration, since the transfer of the property to the "purchasing trustees," as hereinbefore set forth.

Premises considered, I am of opinion and so find, that the objections filed in behalf of the "purchasing trustees" and their transferee, "The Texas Central Railroad Company" are not well taken; that the receiver is entitled to be compensated for his services and the responsibilities incident to his position as a bonded officer of the court, and I have, therefore, allowed the items objected to, to wit: two items of $150.00 each, paid to Receiver Dillingham as salary for the months of April and May, 1893.

The complainant, The Morgan Company, and the defendants, the trust company and The Texas Central Railway Company, who are the parties interested in the property now in the custody of the receivers, as aforesaid, and from which Receiver Dillingham's salary is paid, made no objections to his compensation as fixed by the court, although duly advised thereof, as well as of the objections hereinbefore considered and I am of the opinion and so find, that the said receiver is entitled to receive such compensation until on proceedings by some party in interest or otherwise, the court shall

revoke the order allowing the same. I herewith file the objections of the "purchasing trustees" and the "Texas Central Railroad Company," also the said letter of McHarg to Dillingham, put in evidence on the hearing of this reference, also a report of the testimony adduced on such hearing. Having examined the accounts referred to, and they appearing to be correct, I have approved and passed the same. I have stamped the vouchers filed with the counts "Passed May 19th, 1894."

Respectfully submitted.

JOHN G. WINTER,
Special Master.

June 24th, 1894.

171 Benjamin G. Clarke and Charles Dillingham, joint receivers Texas Central Railway Co.

Cash Receipts and Disbursements from July 1st, 1893, to September 30th, 1893.

Balance on hand as per last statement.....		$44,402 59
Receipts.		
Receivers' accounts:		
Bill- receivable and interest, as per Schedule A	$237 40	
Miscellaneous accounts, as per Schedule B..	635 85	
		873 25
		$45,275 84
Disbursements.		
Receivers' accounts:		
Mileage balances, as per Schedule C.....	$23 02	
Vouchers, as per Schedule D.....	1,242 65	
		1,265 67
Balance remaining on hand October 1, 1893...		44,010 17
		$45,275 84

J. C. KIDD,
For Auditor.

Exhibit A. Eq. No. 21. Master's No., 337. Morgan's La. & Texas R. R. & S. S. Co. *vs.* The Texas Central R'y Co. *et al.* Filed March 3, 1894. John G. Winter, master.

Filed April 1st, 1895.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy.*

172 *Report of Master upon Accounts of Receivers of the Texas Central Railway Company for the Months of October, November, and December*, 1893.

Master's No., 338.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
} No. 21. In Chancery.

To the honorable the judges of said court:

In compliance with orders of court entered in this cause, Charles Dillingham and Benjamin G. Clarke, receivers herein, on the 3d day of March, 1894, filed with me their accounts for the months of October, November and December, 1893, which accounts consist of a statement of cash receipts and disbursements for the period named, with Schedules "A," "B," "C," "D," and "E," showing items, together with vouchers relating thereto.

I hereto attach as "Exhibit A" the statement referred to, and I herewith file the schedules and vouchers accompanying the same.

I duly extended notices to Messrs. Baker, Botts, Baker & Lovett, Messrs. Farrar, Jonas & Kruttschnitt, M. F. Mott, Esq., and L. W. Campbell, Esq., counsel as of record, of the filing of the accounts and that I would call the same for hearing at my office in the city of Waco, on the 14th day of May, 1894. The reference was duly called in pursuance of the notices so extended. There was no appearance of parties by counsel or otherwise other than Mr. Campbell, who appeared as the attorney for the Texas Central Railroad Company and Charles Moran, Henry K. McHarg and Cornelius B. Gold, "purchasing trustees."

Mr. Campbell joined with the master in an examination of the accounts aforesaid, and stated that he had no objections or exceptions to make thereto, except as to the following items of dis-

173 bursement therein appearing, to wit, vouchers Nos. 7844, 7851, 7860, 7863, 7865 and 7872, the said vouchers being for the payment of salary to Receiver Charles Dillingham for the months respectively of May, July, August, September, October and November, 1893. Objection was also made to item contained in voucher No. 7871, six hundred dollars paid November 30th, 1893, to George Kidd as general book-keeper, for services rendered subsequent to September 24th, 1891, on which date the operation of the railway was transferred by the receivers to the "purchasing trustee," aforesaid, under order of court of August 28th, 1891.

The exceptions to the items of receiver's salary were duly formulated by Mr. Campbell and filed with me May 14, 1894, whereupon I set down said exceptions to be heard at my office aforesaid on the

19th day of said May, and so likewise the verbal exceptions as to the item of $600, paid to Mr. Kidd, and gave notice thereof to Mr. Campbell, to Receiver Dillingham to George Kidd and to all counsel above named. The exceptions concerning the receiver's salary were also addressed to similar items in the accounts of June, July and August, 1893, and are filed with my report upon those accounts, master's No. 337.

In pursuance of the notices extended, as aforesaid, the exceptions aforesaid were called for consideration at my office on said 19th of May, when appeared Mr. Campbell, Mr. George Kidd, Receiver Dillingham with his attorney, Mr. Parker.

Mr. Parker objected that the contestants, The Texas Central Railroad Company and the said purchasing trustees are not such parties to the litigation before the court, and have no such interest in the property now in the hands of the receivers and still in controversy, as entitles them or either of them to interpose the exceptions filed by them. The objections were overruled and Mr. Parker duly excepted.

In my report upon the receiver's accounts for the quarter (July, August and September) preceding the one now under consideration, master's No. 337, I fully reported to the court the facts relative to the allowance and payment of salary to Mr. Dillingham, together with my findings upon the questions raised under the exceptions. That report is applicable to the items of such salary embraced in the accounts covered by this report, and I beg to make the report in No. 337 a part of this report, and I adopt the findings therein set forth. The two sets of accounts were considered and discussed on hearing as one, and the exceptions and testimony relating to this report were filed with my report in No. 337.

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Considering the objection to the item of $600 paid to George Kidd, I find from the testimony and the record that prior to September 24, 1891, the Texas Central railway had, since February, 1885, been operated by the receivers; that during that period the business had been regularly conducted in the manner usual with common carriers of like characters—relations with other transportation lines had been established involving the keeping of records and accounts, requiring the attention of an expert in such matters, that at the time that the transfer aforesaid was made to the "purchasing trustees" it became incumbent upon the receiver to close and wind up such of the business of the railway as a carrier that was undetermined and unsettled at the time of the transfer, and that the adjustment of these matters required the services of an accountant experienced in the details of that character of business; I find that Mr. Kidd had long been engaged in work of that character—the auditing of railway accounts, traffic balances, etc., in the employment of the receivers, that he had been employed by the receivers herein in that work for long prior to and so was employed at the time of the transfer aforesaid to the purchasing trustees—that he was familiar with the accounts, and that the receivers properly retained him in their employment for the purposes and work contemplated in such employment. The voucher representing this

expenditure states that the amount was paid for 24 months' services from September 24, 1891, at the rate of $25 per month. I find from the evidence that the money was paid and received as gross compensation for all services rendered from September 24, 1891, to the termination of the receivership, and that the statement of rate per month was inserted merely as coincident with date of payment. I find that the amount so paid was not an unreasonable allowance, and the *that* object thereto is not well taken.

175 In the examination of the vouchers filed with the accounts, one for $231.14 for traffic balance, as set forth in Schedule "E," was omitted. That voucher was subsequently filed with me, and is herewith filed.

In the examination of Schedule "D" I find no vouchers for items therein mentioned, to wit, amount paid to comptroller November 28, 1893, as a balance due upon a former remittance, $68.42; city taxes paid to the city of Albany, December, 4, 1893, $97.29 and like taxes in the city of Whitney, same date, $201.75, and an item of one dollar paid December 30, 1893, to said Albany. Having examined the accounts of the receiver for the said months of October, November and December, 1893, and they appearing to be correct, except as to the above-noted unvouched items in Schedule D, I have approved and passed the same. I have stamped the vouchers herewith filed "Passed May 19th, 1894."

Respectfully submitted.

JOHN G. WINTER,
Special Master.

June 30th, 1894.

EXHIBIT A.

Benjamin G. Clarke and Charles Dillingham, joint receivers Texas Central Railway Co.

Cash Receipts and Disbursements from October 1st, 1893, to December 31st, 1893, Inclusive.

Balance remaining on hand date of last report		$44,010 17
Receipts.		
Receivers' accounts:		
Bills receivable and interest as per Schedule A	$275 30	
Sale of town lots, as per Schedule B	30 85	
		306 15
		$44,316 32

176 Disbursements.

Receivers' accounts:

Vouchers, as per Schedule C	$1,591 34	
Taxes, as per Schedule D	1,650 42	
Miscellaneous, as per Schedule E	231 14	
		$3,472 89
Balance remaining on hand		40,843 43
		$44,316 32

J. C. KIDD,
For Auditor.

Exhibit A. Eq. No. 21. U. S. cir. ct., Waco. Master's No., 338. Morgan's R. R. & S. S. Co. *vs.* The Texas Central R'y Co. Filed March 3, 1894. John G. Winter, special master.

Filed April 3, 1895.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy*.

(From January 1, 1894, to March 31, 1895. N.)

Report of Master upon Accounts of Receivers of the Texas Central Railway Company for the Months of January, February, and March, **1894.**

Master's No., 339.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
No. 21. In Chancery.

To the honorable the judges of said court:

177 On the 2nd of July, 1894, Benjamin G. Clarke and Charles Dillingham, receivers in this cause, in compliance with orders of court, filed with me a statement of their accounts as such receivers for the months of January, February and March, 1894, with schedules of items A to E, inclusive, together with vouchers for expenditures.

After notices duly extended to Messrs. Baker, Botts, Baker & Lovett, Farrar & Kruttschnitt, M. F. Mott, and L. W. Campbell, counsel as of record, the reference was regularly called for hearing at my office, in the city of Waco, on the 17th of November, 1894. There was no appearance of parties by counsel or otherwise, neither was there any objections or exceptions to said accounts or any items thereof.

Whereupon I took the accounts under advisement for examination and report. I have examined the statements, schedules and vouchers constituting the accounts aforesaid, and they appearing to be correct, I have in the absence of objections or exceptions approved and passed the same.

I hereto attach as "Exhibit A," the statement of the receivers showing receipts and disbursements, and I herewith file the schedules and vouchers appertaining thereto. I have stamped the vouchers "Passed November 17, 1894."

Respectfully submitted.

JOHN G. WINTER, *Master.*

December 8, 1894.

EXHIBIT A.

Benjamin G. Clarke and Charles Dillingham, joint receivers Texas Central Railway Co.

Cash Receipts and Disbursements from January 1st, 1894, to March 31st, 1894, Inclusive.

Balance remaining on hand date of last report.....			$40,843 43
Receipts.			
Receivers' accounts:			
Bills receivable and interest, as per Schedule A.....		$1,745 74	
178 Miscellaneous, as per Schedule B		90	
Taxes refunded, as per Schedule C...		37 26	
			1,783 90
			$42,627 33
Disbursements.			
Receivers' accounts:			
Vouchers per Schedule D....		$493 73	
Mileage balances, as per Schedule E.....		70	
			494 43
Balance remaining on hand April 1, '94.....			$42,132 90

J. C. KIDD,
For Auditor.

Exhibit A. Eq. No. 21. U. S. cir. ct., Waco. Master's No., 339. Morgan's R. R. & S. S. Co. *vs.* The Texas Central R'y Co. Filed July 2, 1894. John G. Winter, special master.

Filed April 4, 1895.

J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

Report of Master upon Accounts of Receivers of the Texas Central Railway Company for the Months of April, May, June, July, August, and September, 1894.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Master's Nos., 340 and 341.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY *et al.*
} No. 21. In Chancery.

To the honorable the judges of said court:

On the 1st of October, 1894, Benjamin G. Clarke and
179 Charles Dillingham, receivers in this cause, in compliance with orders of court, filed with me a statement of their accounts as such receivers for the quarter embracing the months of April, May and June, 1894, and on the same day they likewise filed their accounts for the months of July, August, and September, 1894. I here report upon both. Accompanying the statements are schedules and vouchers, which I herewith file.

After notices duly extended to Messrs. Baker, Botts, Baker & Lovett, Farrar & Kruttschnitt, M. F. Mott and L. W. Campbell, counsel as of record, the reference was regularly called for hearing at my office in the city of Waco, on the 17th of November, 1894. There was no appearance of parties by counsel or otherwise, neither was there any objections or exceptions to said accounts or any item thereof.

Whereupon I took the accounts under advisement for examination and report. I have examined the statements, schedules and vouchers constituting the accounts aforesaid, and they appearing to be correct, I have in the absence of objections or exceptions approved and passed the same.

I hereto attach as "Exhibit A," the statement of the receivers showing receipts and disbursements for the months of April, May and June, 1894, and as "Exhibit B" a similar statement for the months of July, August and September, 1894. I have stamped the vouchers "Passed November 17, 1894."

Respectfully submitted.

JOHN G. WINTER, *Master.*

EXHIBIT A.

Benjamin G. Clarke and Charles Dillingham, joint receivers Texas Central Railway Co.

Cash Receipts and Disbursements from April 1st, 1894, to June 30th, 1894, Inclusive.

Balance remaining on hand date of last report.....			$42,132 90
Receipts.			
Receiver's accounts:			
Bills receivable and interest, as per Schedule A.....		$469 35	
180 Miscellaneous, as per Schedule B.....		32 84	
			502 19
			$42,635 09
Disbursements.			
Receiver's accounts:			
Miscellaneous payments, as per Schedule C...		$6 08	
Vouchers, as per Schedule D.....		500 13	
			$506 21
Balance remaining on hand July 1, '94.....			$42,128 88

J. C. KIDD,
For Auditor.

Exhibit A. Eq. No. 21. U. S. cir. ct., Waco. Master's No., 340. Morgan's R. R. & S. S. Co. *vs.* The Texas Central R'y Co. Filed October 1, 1894.

JOHN G. WINTER,
Special Master.

EXHIBIT B.

Benjamin G. Clarke and Charles Dillingham, joint receivers Texas Central Railway Co.

Cash Receipts and Disbursement from July 1st, 1894, to September 30th, 1894, Inclusive.

Balance remaining on hand date of last report			$42,128 88
Receipts.			
Receiver's accounts:			
Bills receivable and interest, as per Schedule A.		$239 03	
Claims against other lines, as per Schedule B..		4 24	
			$243 27
			$42,372 15

181 Disbursements.

Receivers' accounts:
Vouchers, as per Schedule C $10 00
$10 00

Balance remaining on hand Oct. 1, '94..... $42,362 15

J. C. KIDD,
For Auditor.

Exhibit B. Eq. No. 21. U. S. cir. ct., Waco. Master's No., 340. Morgan's R. R. & S. S. Co. *vs.* The Texas Central R'y Co. Filed October 1, 1894.

JOHN G. WINTER,
Special Master.

Filed April 4th, 1895.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy.*

Special Report of Master under Order of Court of April 8th, 1895, and Concerning Accounts of Receivers Texas Central Railway Company for the Months of October, November, and December, 1894, and January, February, and March, 1895.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

Master's Nos., 342, 343.

MORGAN'S LOUISIANA AND TEXAS RAILROAD & Steamship Company *et al.* *vs.* THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21, Equity.

To the honorable the judges of said court:

Benjamin G. Clarke and Charles Dillingham, receivers in this cause, on the 16th of February, 1895, filed with me their accounts for the quarter ending December 31st, 1894, and on the 3d of April, 1895, their accounts for the quarter ending March 31st, 1895, said accounts being so filed as required by orders of court hereto-
182 fore entered. The accounts so filed consist of statements of receipts and disbursements for the respective periods named, with schedules attached, showing items and vouchers therefor.

I hereto attach as Exhibit A the statement for the quarter ending December 31st, 1894, and as Exhibit B the statement for the quarter ending March 31st, 1895. I set this reference to be heard at my office in the city of Waco, April 8th, noon, and I duly so advised Mr. Kruttschnitt, attorney for Morgan's Louisiana & Texas R. R. & S. S. Co. and the Texas Central R'y Co. and Mr. Mott, attorney for the Farmers' Loan & Trust Co., and Mr. L. W. Campbell,

attorney for the Texas Central R. R. Co. and the purchasing trustees. On the date named Messrs. Mott and Kruttschnitt were in the city of Waco in attendance upon the United States court, then in session.

The reference was called between twelve and one o'clock of April 8th, when appeared Mr. L. W. Campbell, Messrs. Mott and Kruttschnitt not attending. Mr. Campbell, with the master went over the accounts and stated that he had no objections or exceptions to make thereto except as to vouchers Nos. 7899, 7904, 7906, 7908, 7912, of $150.00 each appearing in the accounts of October, November and December for salary paid to receiver Charles Dillingham for the months of June, July, August, September, October and November, 1894, and also as to vouchers Nos. 7916, 7917 and 7918 in the accounts for January, February and March of $150 each, salary paid to said receiver for the months of January, February and March, 1895, and that as to those items he made the same objections and exceptions as set forth in regard to similar items in his exceptions to the master's report filed with the clerk of this court April 8th, 1895, and in connection and relating to the items above set forth he renewed his exceptions filed April 8th, aforesaid in reference to Receiver Dillingham's salary as vice-president of the South Texas national bank.

I adjourned the hearing thereupon until 5 o'clock p. m. to afford opportunity for the attendance of Messrs. Mott and Kruttschnitt. Mr. Kruttschnitt attended at the adjourned hearing, but in the meantime the master had been advised that an order of court
183 had but a few hours previously been entered providing that all papers relating to references before the master and unreported should be filed with the clerk of the court.

Notwithstanding that this reference had progressed on hearing as above set forth before the entry of the aforesaid order, yet by reason of the fact that it was unconcluded and therefore unreported, I was of the opinion that it came within the letter of the order and therefore proceeded no further with the hearing.

In compliance with said order of April 8th, I herewith return into court all papers filed with me in connection with said references. Those papers relating to the accounts of October, November and December, 1894, have heretofore been endorsed by me as master's No., 342, and those relating to the accounts of January, February and March, 1895, have heretofore been so endorsed as master's No., 343, and by those endorsements may be identified. This report was in fact prepared as to proceedings had before me up to the adjournment of the master's court as above noted, before the entry of said order of the court of April 8th, and as the matters herein reported are the only references before me, and this report clears the master's docket, I thought that to complete it as I do would be a proper compliance with said order.

Respectfully submitted,

JOHN G. WINTER, *Master, &c.*

Benjamin G. Clarke and Charles Dillingham, joint receivers Texas Central Railway Co.

Cash Receipts and Disbursements from October 1st, 1894, to December 31st, 1894, Inclusive.

Balance on hand as per statement rendered		$42,362 15
Receipts.		
Receiver's accounts:		
Bills receivable and interest thereon, as per Schedule A	$904 55	
184 Miscellaneous accounts, as per Schedule B.....	1 55	
		$906 10
		$43,268 25
Disbursements.		
Receiver's accounts:		
Approved vouchers paid as per Schedule C		$1,410 40
Balance remaining on hand January 1, 1895...		$41,857 85

J. C. KIDD,
For Auditor.

Exhibit A. Eq. 21. U. S. C. C., Waco. Master's No., 342. Filed Feb. 16, 1895. John G. Winter, master, &c.

Benjamin G. Clarke and Charles Dillingham, joint receivers Texas Central Railway Co.

Cash Receipts and Disbursements from January 1st, 1895, to March 31st, 1895.

Balance on hand as per last statement, December 31, 1894.....		$41,857 85
Receipts.		
Receiver's accounts:		
Sundry collection, as per Schedule A		516 40
		$42,374 25
Disbursements.		
Receiver's accounts:		
Current vouchers paid, as per Schedule B.	$1,106 92	1,106 92
Balance remaining on hand		$41,267 33

Correct.

GEO. KIDD,
For Auditor.

Exhibit B. Eq. No. 21. U. S. C. C., Waco. Master's No.
185 343. Filed April 3, 1895. John G. Winter, master. Filed June 22, 1895. J. H. Finks, clerk, by C. A. Richardson, deputy.

(o.)

April 1, 1895, to May 14, 1895.

Final Report of Charles Dillingham, Receiver.

The Central Railway Company—Benjamin G. Clarke and Charles Dillingham, joint receivers.

Final Statement of Cash Receipts and Disbursements from April 1, 1895, to May 14, 1895, Inclusive.

Balance of cash on hand as reported March 31, 1895...		$41,267 33
Receipts.		
Collected account bills receivable as exhibited on Schedule A.....		533 65
		$41,800 98
Disbursements.		
Paid approved vouchers, as per Schedule B..	$156 65	
Paid J. H. Finks, clerk U. S. circuit court, Waco, April 8, 1895, B.....	41,267 33	
Paid J. H. Finks, clerk U. S. circuit court, Waco, balance cash on hand May 14, 1895.	377 00	
		$41,800 98

Endorsed: 21. Equity. Morgan's Louisiana and Texas Railroad and Steamship Company *vs.* Texas Central Railway Company *et al.* Filed May 16, 1895. J. H. Finks, clerk, by C. A. Richardson, deputy.

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Special Report of Master Commissioners.

In the United States Circuit Court for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILWAY & STEAMSHIP COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. In Equity.

and

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } Equity. No. 33.

To the honorable the judges of said court:

Charles Dillingham and John G. Winter, special master commissioners, duly appointed in the above-entitled cause to make sale of

the properties of said Texas Central Railway Company, as provided by final decree entered therein of date April 12, 1887, respectfully report:

That on the 22d day of April, 1891, said property was sold to Charles Moran, Henry K. McHarg and Cornelius B. Gold, purchasing trustees, for the sum of seven hundred and fifty thousand dollars, whereupon said trustees paid into the hands of said commissioners the sum of twenty-five thousand dollars, as by said final decree required, all of which more fully appears by the report of said commissioners, filed April 25, 1891.

That thereafter, by order of court of date May 8, 1891, said sale was confirmed.

That of said twenty-five thousand dollars, said commissioners have disbursed twenty thousand, two hundred and eighteen dollars and twenty cents, under orders of court, relative to cash disbursements, and by authority and agreements of parties hereunto attached as Exhibit A, to wit:

Check No. 1—	
"News Printing Company," advertising circulars, etc., concerning sale	$31 00
187 Check No. 2—	
"Waco Day," newspaper advertising sale and notices	153 40
Check No. 3—	
Allowance to John G. Winter as special master in chancery and master commissioner	13,875 00
Check No. 4—	
Turner, McClure & Rolston, advertising sale in Financial Chronicle	104 00
Check No. 5—	
Payment upon forty (40) mortgage bonds hereinafter enumerated and unrepresented by the trustees, $151.37 per bond	6,054 80

All of which payments except the item of $6,054.80, are embraced in the statement accompanying the agreement hereto attached and marked "Exhibit B," and which is made a part of this report, and as such is here referred to.

That said commissioners now have four thousand seven hundred and eighty-one dollars and eighty cents to their joint credit as such commissioners, on deposit in the South Texas national bank, in the city of Houston, such deposit being the unexpended balance of said twenty-five thousand dollars; that said commissioners have not heretofore been able to make report concerning a conveyance of said property to said trustees under the terms of said final decree, and said order confirming said sale, but they now so report under decree of court, entered of date May 14th, 1892, and agreement contained in said "Exhibit A, B" hereto attached, and report of Farmers' Loan and Trust Company, filed Dec. 13th, 1892, and hereto

attached as Exhibits C, D, and as required by said order of May 8th, 1891; that in said decree of May 14th, 1892, "modifying decree dated November 4th, 1891," it is authorized and directed that said special master commissioners or either of them stamp or endorse upon any bonds and overdue coupons "secured by the mortgages made to the Farmers' Loan and Trust Company, the distrib-
188 utive amount that the said purchasing trustees, as the holders thereof, would be entitled to receive, in case the entire amount of bid were paid in cash, and said special master commissioners, after so writing or stamping upon said bonds, shall return the same to the holder or holders thereof." That it is stipulated in said Exhibit B that the sum of $235,485.46 be reported by said commissioners as the entire amount of cash payments made by the purchasers on account of the bid, so as to leave a balance for distribution of $514,514.54; and that the entire issue of bonds number 3,399, all of which, except forty-six (46), are represented by said purchasing trustees, and that the amount of dividend payable on each bond shall be $151.37, each of such bonds so to be stamped or endorsed as is provided by said decree of May 14th, 1892; that in compliance with said decree of May 14th, 1892, your commissioner, Charles Dillingham, has stamped thirty-three hundred and fifty-three mortgage bonds presented to them by said trustees, showing the distributive share of each of such bonds to be $151.37, which bonds so stamped are more particularly described in the exhibit hereto attached marked "Exhibit C," and in said exhibit is set forth a copy of the stamp so placed upon said bonds; that they have, through the Farmers' Loan and Trust Company, of New York, paid to the holders of forty of said mortgage bonds, the sum of six thousand and fifty-four $\frac{80}{100}$ dollars, such payments being at the rate of one hundred and fifty-one $\frac{37}{100}$ dollars per bond, and they hereto attach as "Exhibit D" a statement of the numbers of said bonds upon which such payments were made. That after stamping and endorsing said bonds as aforesaid the same were left with the said trust company, with which company they had been deposited by the holders thereof.

Your commissioners further show that by the stamping and endorsement of said bonds as aforesaid and the payments made as hereinbefore, and in said "Exhibit A" set forth the full purchase price bid at the sale of said railway properties by said purchasing trustees, to wit: seven hundred and fifty thousand dollars has been, under the provisions of said decree of May 14th, 1892, satisfied and discharged; that of the total issue of bonds due A. D. 1911
189 there are outstanding and unstamped bonds Nos. 333, 334, 345, accrued; of those due A. D. 1909 there are outstanding and unstamped bonds Nos. 1390, 1428 and 1430, as appears in said "Exhibit B."

That in said "order confirming sale" of date May 8th, 1891, it is provided that your commissioners collect said purchase price, and that they make report thereof and that "all other matters and things contemplated by said final decree are reserved, including the execution of the deed to the property sold, which deed is not to be exe-

cuted until the further 'order of the court or one of the judges thereof.'"

And your commissioners make this report as by said orders and decrees contemplated.

Respectfully submitted.

CHARLES DILLINGHAM,
JOHN G. WINTER,
Special Master Commissioners.

EXHIBIT A.

Texas Central Statement.

Amount of bid			$750,000 00
Deposited with receiver, as per order of court		$120,000 00	
Fees of Dillingham, receiver		20,000 00	
Turner, McClure & Rolston	$30,000 00		
Disbursements	3,460 00		
		33,460 46	
Farmers' Loan & Trust Co., fees	10,000 00		
Disbursements	5,000 00		
Interest	900 00		
		15,900 00	
Farrar, Jonas & Kruttschnitt		5,000 00	
Baker, Botts & Baker		10,000 00	
Ballinger, Mott & Terry		7,500 00	
Willie, Mott and Ballinger		5,000 00	
Clarke, receiver		2,500 00	
Winter, master		13,875 00	
Winter & Dillingham, com'rs		1,250 00	
Publication, costs, etc., say		1,000 00	
			235,485 46
Leaving balance for distribution			$514,514 54

190 which amounts to $151.37 per bond, as there are 3,399 bonds.

Equity. No. 21. United States circuit court, Waco. Received from Messrs Turner, McClure & Rolston, by mail, July 24, 1892, and filed July 25, 1892. John G. Winter, of and for commissioners.

Circuit Court of the United States, Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMship Company
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } Original Bill.

THE FARMERS' LOAN AND TRUST COMPANY
vs.
THE TEXAS CENTRAL RAILWAY COMPANY ET AL. } Cross-bill.

EXHIBIT B.

Whereas, the property and franchise of the Texas Central Railway Company, under and in pursuance of the decree in the above-entitled cause, were sold on the 22d day of April, 1891, and bought in by Charles Moran, Cornelius B. Gold and Henry K. McHarg, on behalf of themselves and other bondholders, representing 3,353 bonds issued under the mortgages foreclosed herein, out of an entire issue of 3,399 bonds, so that there are now outstanding only 46 bonds not represented by the purchasers in said purchase; and,

Whereas, it is most desirable that the master commissioners should at once be able to report to the court to the end that a judgment for deficiency may be entered as provided in the decree.

Now, therefore, it is stipulated that the sum of two hundred and thirty-five thousand, four hundred and eighty-five dollars and forty-six cents, being the aggregate of the statement hereto annexed,
191 be reported by the said commissioners as the entire amount of cash payments made by the purchasers on account of the bid, so as to leave a balance for distribution of five hundred and fourteen thousand five hundred and fourteen dollars and fifty-four cents, so that the amount of dividend payable on each bond shall be one hundred and fifty-one dollars and thirty-seven cents, it being understood that any additional fees to be paid to Mr. Dillingham as commissioner, and any other additional payments that the purchasers may be called upon to make shall not be charged in such a manner as to reduce the dividend payable on the bonds of those who were not represented by the purchasing committee.

TURNER, McCLURE & ROLSTON,
Attorneys for Purchasing Committee.

Filed July 25, 1892. John G. Winter, of and for commissioners. No. 21. Equity. U. S. C. C., Waco.

EXHIBIT C.

NEW YORK, *Dec. 8th*, 1892.

John G. Winter, Esq., master commissioner, Waco, Texas.

DEAR SIR: We herein certify that in accordance with order of court of May 14th, 1892, dated September 29th, 1892, we have stamped the following, viz:

"Nos. 21 and 23. Equity.

United States Circuit Court, Waco, Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMship Company and Farmers' Loan and Trust Company
vs.
TEXAS CENTRAL RAILWAY COMPANY. } $151.37.

This bond stamped under order of court of May 14th, 1892, which order is here referred to, dated this September 29th, 1892.

(Signed) CHAS. DILLINGHAM,
Master Commissioner."

192 Upon the Texas Central Railroad Company, bonds as follows, viz:

Bonds due 1911—Nos. 1–332, 334–343, 346–365 and 406–1254, for $1,000 each—$1,211,000.

Leaving outstanding and unstamped bonds Nos. 333, 344 and 345.

Also on bonds due 1909, Nos. 1–1389, 1391–1427, 1429, 1431–2145 for $1,000 each—$2,142,000.

Leaving outstanding and unstamped bonds Nos. 1390, 1428 and 1430.

We have paid with funds deposited by the court, $151.37 on bonds Nos. 366–405, both inclusive, due 1911, and have stamped the said 40 bonds.

Yours very truly,
THE FARMERS' LOAN & TRUST CO.,
By W. D. SEALES, *V. P.*

Equity. 21. U. S. C. C., Waco, Texas.

Filed Dec. 13, 1892.

JOHN G. WINTER,
Of and for Commissioner.

EXHIBIT D.

(NOTE BY MASTER COMMISSIONER.—The word "court" in first line should read "commissioners," as the commissioners deposited the money with the trust Co. by draft to Turner, McClure & Rolston, September 13, 1892, from the $25,000 in their hands.)

Filed December 13, 1892.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy*.

Report of Special Master A. S. Lathrop.

In United States Circuit Court for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA AND TEXAS RAILWAY and Steamship Company vs. TEXAS CENTRAL RAILWAY COMPANY ET AL.	No. 21. Equity.
FARMERS' LOAN AND TRUST COMPANY, Trustees, vs. TEXAS CENTRAL RAILWAY CO. ET AL.	No. 33. Equity.

193 To the honorable judges of said court:

And now comes A. S. Lathrop, who was appointed by this honorable court, on the 8th day of April, 1895, special master in said cause, and to whom was referred the exceptions to the master's reports that day filed in the matter of the accounts of the receiver, and was instructed to examine into and take upon and report in the premises with his recommendations; and would respectfully report his action in the premises:

After due notice to the solicitors of C. Dillingham, and the purchasing committee of the Texas Central Railway Co., and the Texas Central Railway Co., and after several postponements by the request of the parties, I called the case for hearing at the city of Houston, on the 4th day of November, 1895, at which day there were present L. W. Campbell, representing the Texas Central Railway Co. and the purchasing committee, and George Clark, Esq., representing Mr. Dillingham, the receiver. I heard the testimony of a number of witnesses, which testimony was taken down by a stenographer and typewriter and which accompanies this report marked "Exhibit A" and made a part hereof. The case was then continued with the understanding that the next hearing should be at the city of Waco.

After numerous continuances, etc., the case was again called at Waco on the 9th day of September, 1896, the same parties being present when further testimony was taken in the cases, said testimony accompanying this report marked "Exhibit B" and made a part hereof. I also on that day heard argument by L. W. Campbell, Esq., and George Clark, Esq. After reading said testimony and duly considering the same, I find and would recommend as follows, namely:

I find that on the 4th day of December, 1886, on the application of C. Dillingham, receiver, this honorable court made an order: "It is ordered by the court that the receivers be authorized and directed to place Chas. Dillingham upon the pay-roll of the receivers for the sum of $150.00 per month as an allowance upon his compensation in this cause, this allowance to date from the possession of the receivers and to continue while Mr. Dillingham gives his personal

attention to the business of the company or until further orders of this court."

194 That in accordance with said order he was paid $150.00 per month from the 4th day of April, 1885, up to September, 1891, when the railway together with its rolling stock, etc., was turned over to purchasing trustees complainants herein.

That on the 25th day of August, 1891, the said Chas. Dillingham by his attorneys, made application to John G. Winter, special master in said cause, praying that he "would make to him such allowance for his services as receiver in the above-entitled cause from the date of his appointment until his discharge as to said master may seem just and proper. Similar applications were made by the other receiver, by the attorneys connected with the case and others entitled to be paid for services in said cause.

The master took testimony in regard to the value of the services performed — before reporting the parties compromised their claims and $20,000.00 was allowed the said Dillingham, and paid to him besides the $150.00 per month already paid him.

That since September, 1891, up to March 31, 1895, the said Dillingham has filed his quarterly reports claiming monthly compensation of $150 00 and has retained that amount out of the money on hand belonging to this business, and the special master John G. Winter has made his reports to the court approving same. No objections were made to said reports and to the payment of said $150.00 per month until said master took under consideration the reports allowing to said receiver $150.00 per month for the months of April and May, at which time L. W. Campbell as attorney for the Texas Central Railway Company, Chas. Moran, Henry K. McHarg and Cornelius B. Gold, purchasing trustees, excepted to the allowance of said payment to Dillingham. That after that date the same parties objected to the reports filed containing the charge of $150 00 per month to said Dillingham; and on April 8th, 1895, they filed objections to all the payments of $150.00 per month to said Dillingham from September, 1891.

None of the said master's reports since September, 1891, have been approved by the court, but I consider that the reports

195 filed prior to April, 1893, where by the rules of the court approved, no objections being filed thereto.

I consider from the testimony that the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000.00 was intended as revoking the order of December 4, 1886, allowing him $150.00 per month and was intended as full compensation for the services up to the time the receivership terminated. Since turning over the roll, etc., to the purchasing trustees the duties and labors of the receiver, as appears from the evidence, has not been arduous and such services were contemplated when the fee of $20,000.00 was paid in. All the other parties to whom allowances were made so considered it, as they have made no further charge except Special Master Winter, who was by special agreement allowed a further small compensation.

I do not consider that I have a right to go behind the receiver's

reports which were reported on by the master and not objected to, as above stated. Therefore, the said receiver by receiving $150.00 per month from September, 1891, to April, 1893, has been much more than compensated for any labor he has performed as such receiver from September, 1891, up to the present time.

I would therefore recommend that the exceptions to said receiver's report wherein he has retained $150.00 per month from April, 1893, up to April 8th, 1895, be sustained and that the said Dillingham be ordered to pay that sum into the repository of this court, amount so received is as follows:

For 1893, nine months	$1,350 00
For 1894, twelve months	1,800 00
For 1895, three months	450 00
Total	$3,600 00

In regard to the charge that C. Dillingham, receiver herein, has used the funds in his hands since September, 1891, for his own benefit, that in consideration of depositing the funds of said railway company in the bank in which he was director he was elected vice-president of said bank, at a salary of $1,000 per year, that he had acted fraudulently in regard to the use of said money, was not sustained by the proof. I consider that the testimony clearly exonerates him from acting in any way in an improper manner with the funds in his hands belonging to said railway company, or that he was either directly or indirectly benefited by the same. I would therefore recommend that the exceptions to his manner of using said funds be overruled.

196

All of which is respectfully submitted.

A. S. LATHROP,
Special Master in Chancery.

Endorsed: No. 21. Equity. Morgan's Louisiana & Texas Railway and Steamship Company *vs.* The Texas Central Railway Company *et al.*, and No. 33. Equity. Farmers' Loan & Trust Co., trustee, *vs.* Texas Central Railway Co. *et al.* Report of special master, A. S. Lathrop. Filed Sept. 26th, 1896. J. H. Finks, clerk.

Exceptions of Charles Dillingham to Report of Special Master.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILWAY & Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. Equity.

FARMERS' LOAN AND TRUST COMPANY, Trustee,
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

In the above numbered and entitled cause comes Charles Dillingham, former receiver of the defendant railway company, and here

now excepts to the report of A. S. Lathrop, Esq., special master in this cause, filed herein on September 26th, 1896, wherein said special master finds that this respondent be ordered to pay the sum of $3,600 into the repository of this court, the same being in ex-
197 cess of proper allowances retained by said receiver in the statement and settlement of his final account, and for causes of exception this respondent, Charles Dillingham, says:

1. That said report is erroneous and should not be confirmed, for that, that special master finds as a fact that $20,000 was paid this respondent Dillingham, on compromise, which payment was intended as revoking the order of this court, passed on the 4th day of December, 1886, allowing this respondent $150.00 per month on current account as compensation in part for his services as receiver, and that said $20,000 was intended as full compensation for the services of this respondent up to the time the receivership terminated, when the evidence taken and submitted to the court fails to show any such compromise, and fails to show any particular or special agreement relating thereto, such evidence being wholly wanting in the record, but to the contrary the testimony both for complainant and respondent abundantly shows that said sum of $150 per month was contemplated by both parties to be retained by this respondent as continuing compensation for services being rendered in and concerning the property of said railway company which was left in the hands of this respondent as receiver, for administration, until the filing of this respondent's final account, and the payment of balances of money held in his hands as received under the order of this court.

2. Because the report of said special master finds that because neither John G. Winter, special master, nor the attorneys in the case, claimed any additional compensation after said settlement, that therefore the receiver was not entitled to any additional compensation, when in truth and in fact the evidence shows, by the written admission of one of the complainants, Henry K. McHarg, and by the testimony of the receiver, that the complainants in this case, to wit: Charles Moran, Henry K. McHarg and Cornelius B. Gould, purchasing trustees, and who are now excepting to the allowance of this receiver of said $150 per month, contemplated and conceded that this receiver should receive such compensation of $150 per month until his final discharge by this court. Said finding of the master, therefore, is not only without evidence to support it, but is contrary to the evidence.

198 3. Because the special master finds that the services of this respondent, as receiver, had not been arduous, and that such services were contemplated when the sum of $20,000 was paid him, is without evidence to support such finding, the evidence showing to the contrary that this receiver, after the payment of said $20,000 continued in the discharge of his duties for more than four years as such receiver, administering a large amount of funds belonging to the defendant railway company, left in his hands, paying out the same from time to time under the orders of this court, seeing to the adjustment of land titles and of the defendant railway company,

making sales of their lands and town lots, executing deeds for the same, and generally administering the fund in his hands, under the orders of this court, for that length of time, not only without complaint on the part of the purchasing trustees, but under a written concession from them that he receive said $150 per month for his services, and this, too, as shown by the evidence, over the constant attempt of this respondent, Charles Dillingham, to have the administration closed, and himself and sureties discharged, but without avail, to the fact that the litigation and contests were in progress between parties asserting conflicting interests, including these purchasing trustees, who are now excepting to this allowance.

4. Because the original basis of the exceptions of said purchasing trustees to said allowance was the charge that this respondent had acted fraudulently in depositing the funds in his hands belonging to said railway company in the Southern national bank, of which this respondent was vice-president, and the further charge that this respondent received one thousand dollars per year, because of such deposit; and the master finds from the testimony that there was no basis for any such charge, and that this respondent was neither directly or indirectly benefited by the same, and the claim and complaint of the purchasing committee, who are excepting to said allowance in this court, that they had filed exceptions to the report of the master after 1893 was an afterthought supplied by amendment long after the original exceptions had been filed to said report, and the same had been referred to the master.

199 5. Because the testimony taken in this case shows without contradiction that the services of this respondent, as receiver, from 1891 to 1895 were reasonably worth the sum of $150 per month for such services, and that said alleged compromise and payment of $20,000 related especially to compensation to this receiver as general manager of the railway property of the defendant railway company, and not specifically for his duties as receiver. And this respondent here now files these exceptions to said master's report, and prays the court for a review and consideration of the report of said special master, and that it may please the court to investigate fully the evidence taken in this case, and to order and decree that said items objected to and which have been found by the special master against this respondent, be allowed as proper and reasonable charges for and in behalf of the receiver in the final settlement of his account. And for such other and further orders and relief as to the court may seem proper.

CLARK & BOLINGER,
Solicitors for Chas. Dillingham, Respondent.

Filed Sept. 30th, 1896.

J. H. FINKS, *Clerk.*

Decree Confirming Master's Report.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. Equity.

and

FARMERS' LOAN & TRUST COMPANY
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

On this day came on to be heard the report of A. S. Lathrop, master in chancery, filed herein on September 26th, 1896, to whom was referred for consideration and report, the exceptions of
200 Charles Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, to the account of Charles Dillingham, receiver in said causes, and who by his report recommends that the exceptions to said receiver's reports wherein he has retained $150 per month from April, 1893, up to April 8, 1895, be sustained, and that said Dillingham be ordered to pay that sum into the depository of this court, and at the same time came on to be heard the exceptions of said Charles Dillingham to said report, which exceptions were filed herein on September 30, 1896, and at the same time came on to be heard the exceptions of said purchasing trustees to said report, which exceptions were filed herein on October 13, 1896, and argument being heard thereon, the court is of opinion, and so decrees that the master's said report should be, and it is hereby confirmed, and that the exceptions of all parties to said report should be, and they are hereby dismissed.

It is therefore ordered, adjudged and decreed by the court that said Charles Dillingham be, and he is hereby ordered to at once pay into the registry of this court, the sum of ($3,600) three thousand six hundred dollars; and that said sum when so paid in shall constitute a part of the funds belonging to the receivership in the above numbered and entitled cause.

CHARLES SWAYNE, *Judge.*

Filed December 5, 1896.

J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

Allowance of Appeal to Charles Dillingham, Receiver.

In the Circuit Court of the United States for the Northern District of Texas.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. Equity.

and

FARMERS' LOAN & TRUST COMPANY
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

201 In the above-numbered and entitled causes, the receiver, Charles Dillingham, conceiving himself aggrieved by the order entered on December 5th, 1896, in the above-entitled proceeding wherein it was ordered and decreed by the court that said Charles Dillingham, be and he is hereby ordered to at once pay into the registry of this court the sum of $3,600 and that said sum when so paid, shall constitute a part of the fund belonging to the receivership in the above numbered and entitled cause, doth hereby appeal from said order to the United States circuit court of appeals for the fifth judicial circuit at the city of New Orleans, State of Louisiana, and he prays that this is his appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order was made duly authenticated, may be sent to said circuit court of appeals for the fifth judicial circuit.

GEO. CLARK,
D. C. BOLINGER,
Attorneys for the Receiver, Charles Dillingham.

And now, to wit: on December 11th, 1896, it is ordered that the above appeal be allowed as prayed for.

CHAS. SWAYNE,
U. S. District Judge.

Filed December 11th, 1896.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy.*

Assignment of Errors of Chas. Dillingham, Appellant.

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILWAY AND Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. Equity.

FARMERS' LOAN & TRUST COMPANY, Trustees,
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

202 In the above numbered and entitled cause comes Charles Dillingham, receiver, contemporaneously with the allowance of his appeal herein taken upon an order of this court entered on December 5th, 1896, in the above-entitled proceeding, wherein it was ordered and decreed by the court that the report of the special master A. S. Lathrop in this case be approved, and that he, the said Charles Dillingham, be and he is hereby ordered to at once pay into the registry of this court the sum of $3,600.00, and he, the said Charles Dillingham, here now assigns the following errors committed by said circuit court of the United States for the northern district of Texas at Waco in said cause in the making and passage of said order and decree of December 5th, 1896, as aforesaid to wit:

1. The court erred in approving said report of the special master, A. S. Lathrop, because said master found as a fact that $20,000 was paid this appellant, Dillingham, as receiver, in compromise, which payment was intended as revoking the order of the circuit court of the United States for the northern district of Texas, passed on the 4th day of December, 1896, allowing this appellant, as receiver, $150.00 per month on current account as compensation in part for his services as receiver, and that said $20,000 was intended as full compensation for the services of this appellant up to the time the receivership terminated, when the evidence taken and submitted by said special master to the court, failed to show any such compromise, and failed to show any agreement relating thereto, such evidence being wholly absent from the record, but to the contrary, the testimony both for appellant and appellees herein, abundantly demonstrated that said sum of $150.00 per month was contemplated by both parties to be retained by this appellant, Dillingham, as continuing compensation for services being rendered in and concerning the property of said railroad company, which was left in the hands of this appellant as receiver for administration until the filing of this appellant's final account as such receiver and the payment of balances of money held in his hands as receiver under the order of said circuit court of the United States.

203 2. The court erred in approving said report of the special master and in entering the decree aforesaid because the report

of said special master A. S. Lathrop, finds that because neither John G. Winter original special master, nor the attorneys in the case claimed any additional compensation after said purported settlement, that therefore the appellant, as receiver, was not entitled to any additional compensation when in truth and in fact the evidence shows by the written admission of one of the complainants, Henry K. McHarg, and by the testimony of the receiver, that the appellees in this cause, to wit: Charles Moran, Henry K. McHarg and Cornelius B. Gould, purchasing trustees, who were the only parties who excepted to said allowance, contemplated and conceded that this appellant, as such receiver, should receive such compensation of $150.00 per month until his final discharge by said circuit court, said finding of the master therefore was not only without evidence to support it, but was contrary to the evidence and the order and decree aforesaid is without evidence to support it and likewise contrary to the evidence.

3. Said order and decree of December 5th was further erroneous because said special master finds that the services of this appellant as receiver had not been arduous, and that such services were contemplated when the sum of $20,000.00 was paid him, was totally without evidence to support such finding, the evidence showing to the contrary that this appellant as such receiver after the payment of said $20,000 continued in the discharge of his duties for more than four years as such receiver, administering a large amount of funds belonging to the defendant railway company left in his hands and paying out the same from time to time under the orders of the court, seeing to the adjustment of the land titles of the defendant railway company, making sales of their lands and town lots, executing deeds for the same and generally administering the fund in his hands under the orders of said circuit court of the United States for the northern district of Texas for that length of time, not only without complaint on the part of the purchasing trustees, who are appellees here, but under a written concession from them that he should receive said $150.00 per month for his services, and
204 this, too, as shown by the evidence, over the repeated attempts of this appellant, Charles Dillingham, as receiver, to have said receivership closed and himself and sureties discharged, but without avail, owing to the fact that litigation and contests were in progress between parties asserting conflicting interests, including these appellees, who are now excepting to this allowance.

4. The court further erred in passing said decree and order of *September* 5th, because the original basis of the exceptions of said trustees, appellees herein to said allowance, was the charge that this appellant, Charles Dillingham, as receiver, had acted fraudulently in depositing the funds in his hands belonging to said railway in the Southern national bank, of which he, this appellant, was vice-president, and the further charge that this appellant received $1,000.00 per year because of such deposit; and the master finds from the testimony that there was no basis for any such charge, and that this respondent neither directly nor indirectly was benefited by said deposit, and the claim and complaint of the purchasing com-

mittee, who are appellees herein, that they had filed exceptions to the report of the master after 1893, was an afterthought supplied by amendment long after the original exceptions had been filed to said report and the same had been referred to Special Master A. S. Lathrop, and therefore the special master had no jurisdiction of any such inquiry, nor could appellees, by amendment before the master, raised any such issue, the sole issue to be determined being the issue of fraud and peculation preferred by appellees in their original exceptions in said circuit court of the United States, and upon which this reference was had to the master.

5. Said order and decree of December 5th is further erroneous because the testimony taken in the case shows without contradiction that the services of this appellant, as receiver, from 1891 to 1895, were reasonably worth the sum of $150.00 per month and that said alleged compromise and payment of $20,000.00 related specially to compensation to this appellant as receiver as general manager of the railway property of the defendant railway company, and not specifically for his duties as receiver.

6. Said order and decree of December 5th, 1896, was fur-
205 ther erroneous because the finding of the master and his report as well as said order and decree approving the same, are contrary to the law and to the evidence and contrary to the equities of the case as developed by the testimony.

And the appellant, Charles Dillingham, here now assigns the foregoing errors and prays that the same may be duly considered by the United States circuit court of appeals for the 5th judicial circuit, and that said errors be corrected and equity be done to this appellant.

GEO. CLARK,
D. C. BOLINGER,
Counsel and Solicitors for Appellant, Charles Dillingham.

Filed December 11th, 1896.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy*.

Order Fixing Appeal Bond of Chas. Dillingham, Receiver.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL.
} No. 21. Equity.

DECEMBER 17, 1896.

On motion of Charles Dillingham, receiver, it is ordered by the court that his appeal bond, on the appeal heretofore allowed him from the decree of this court confirming the master's report on exception to his accounts as receiver, be and it is hereby fixed at the sum of two hundred and fifty dollars, same to act as a supersedeas.

CHAS. SWAYNE, *Judge*.

Filed December 18, 1896.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy*.

206 *Appeal Bond of Charles Dillingham.*

In the Circuit Court of the United States for the Northern District of Texas, at Waco.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company,
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 21. Equity.

FARMERS' LOAN AND TRUST COMPANY
vs.
TEXAS CENTRAL RAILWAY COMPANY ET AL. } No. 33. Equity.

Know all men by these presents: That we, Charles Dillingham, as principal, and M. T. Jones and Henry Brashear as sureties are held and firmly bound unto Amedee D. Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, and to the Farmers' Loan and Trust Company, trustee, Morgan's Louisiana & Texas Railroad & Steamship Company, and to the Texas Central Railway Company, defendant, in the sum — $250.00, for which sum well and truly to be paid, we do bind ourselves, and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 18th day of December, 1896.

The condition of the above obligation is such that, whereas, lately at a regular term of the United States circuit court for the northern district of Texas at Waco, begun and holden on, to wit: the third Monday in November, A. D. 1896, in a certain suit therein pending wherein The Morgan's Louisiana & Texas Railroad & Steamship Company is complainant and The Texas Central Railway Company is defendant, the same being equity cause No. 21, and The Farmers' Loan and Trust Company is complainant, and The Texas Central Railway Company is defendant, the same being equity cause No. 33 consolidated, and in which cases the above-named principal, Charles Dillingham, is receiver, a decree was rendered upon the report of Hon. A. S. Lathrop, master in chancery, requiring the said Charles Dillingham to immediately pay into said court
207 the sum of $3,600.00, and dismissing the exceptions of the said Charles Dillingham, thereto, and he the said Charles Dillingham having obtained an order of appeal in open court at the same term at which said decree was rendered to reform said decree in the aforesaid suit, said appeal being to the circuit court of appeals for the 5th circuit, to be holden at New Orleans, La., within thirty days from the date thereof.

Now, the condition of the above obligation is such that if the said Charles Dillingham shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea

good, then and in that event the above obligation is to become void; otherwise to remain in full force and effect.

CHAS. DILLINGHAM.
M. T. JONES.
H. BRASHEAR.

Taken and approved this the 19th day of December, 1896.

CHAS. SWAYNE, *Judge.*

Filed December 19th, 1896.

J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

Circuit Court of the United States for the Northern District of Texas, at Waco, Texas.

I, J. H. Finks, clerk of said circuit court, do hereby certify that the foregoing and attached two hundred and fifty-seven pages of printing and typewriting contain a full true and correct transcript and record of the papers filed and proceedings had, in the matter of exceptions to the master's report on receiver's accounts, in Morgan's Louisiana & Texas Railroad & Steamship Company *vs.* The Texas Central Railway Company *et al.*, No. 21 equity and Farmers' Loan & Trust Company, trustee, *vs.* The Texas Central Railway Company *et al.*, No. 33 equity, as fully as they same are now on file and of record in said court at Waco.

208 In testimony whereof I hereunto sign my name and affix the seal of said circuit court, at office in the city of Waco, on this the 7th day of January, A. D. 1897.

[SEAL.] J. H. FINKS, *Clerk,*
By C. A. RICHARDSON, *Deputy.*

209 *Agreement and Supplemental Transcript of Record. Filed March 3rd,* 1897.

United States Circuit Court of Appeals, Fifth Circuit.

CHARLES DILLINGHAM, Receiver, Appellant,
vs.
AMEDEE D. MORAN ET AL., as Purchasing Trustees, Appellees.

The report of the special master, Jno. C. Winter, "under decree of April 12th, 1887, relative to the compensation of complainants, receivers, solicitors, etc.," having been in evidence before the master in chancery, Hon. A. S. Lasthrop, upon the hearing of the exceptions of the purchasing trustees to the accounts of the receiver, Charles Dillingham, and a copy of said report having been inadvertently omitted from the transcript of the record, it is agreed that the annexed copy of the said report may be filed in this cause, and, when so filed, shall constitute a part of the record herein.

GEO. CLARK,
Solicitor for Charles Dillingham, Ap'lant.
L. W. CAMPBELL,
Solicitor for Moran et al., Appellees.

210 *Report of Master under Decree of April* 12, 1887, *Relative to Compensation of Complainants, Receivers, Solicitors, etc.*

In the United States Circuit Court for the Northern District of Texas, at Waco.

Master's Consolidated No., 321.

MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company *et al.* *vs.* THE TEXAS CENTRAL RAILWAY COMPANY *et al.* } No. 21. In Chancery.

THE FARMERS' LOAN AND TRUST COMPANY *vs.* MORGAN'S LOUISIANA & TEXAS RAILROAD & Steamship Company *et al.* } No. 33. In Chancery.

To the honorable the judges of said court:

I make this report under the provisions of article eighteen of the final decree entered in this cause of date April 12, 1887.

211 An appeal from this decree to the Supreme Court of the United States suspended the execution of its provisions until the affirmance thereof at the October term, 1890, of said court.

After notices duly extended, the matters and things concerning compensation, etc., of trustees, receivers and solicitors, referred to me under the second and third sections of said paragraph eighteen, came on to be heard at my office, in the city of Houston, Texas, on the 8th day of June, 1891, when appeared Messrs. E. B. Kruttschnitt, L. C. Alexander, W. B. Botts and Thos. J. Ballinger, solicitors respectively representing interest as more particularly hereinafter appears.

At this hearing claims for compensation and allowances were presented, to wit:

The Metropolitan Trust Company; Messrs. Baker, Botts & Baker; Mr. Chas. Dillingham, receiver; Mr. Benjamin G. Clarke, receiver; Messrs. Farrar & Kruttschnitt; the Farmers' Loan and Trust Company; Messrs. Turner, McClure & Rolston; Messrs. Willie, Mott & Ballinger.

These references were then heard and submitted except so much thereof as relates to the Metropolitan Trust Company, which, by consent, was adjourned to the 6th of July, 1891, to be heard at Waco. In pursuance of such adjournment, that reference was heard at the Federal court room, in the city of Waco, on said 6th of July, and was submitted, Messrs. Mott & Alexander being in attendance.

This suit was instituted by Morgan's Louisiana and Texas Railroad and Steamship Company, by original bill filed by its solicitors,

Messrs. Farrar & Krutschnitt, of New Orleans, April 2nd,
212 1885, in the circuit court of the United States, for the northern district of Texas, at Waco, as cause No. 21 on the equity docket of that court.

On the 14th day of May following, said Morgan Company filed an amended and supplemental bill. The Texas Central Railway Company, the Metropolitan Trust Company of the City of New York, and the Farmers' Loan and Trust Company, were made defendants, and duly appeared and pleaded by their respective counsel and solicitors, that is to say, Messrs. Baker, Botts & Baker, of Houston, Texas, for the Central railway; Mr. Thos. G. Hillhouse, of New York, and Mr. L. C. Alexander, of Waco, Texas, for the Metropolitan Trust Company, and Messrs. Turner, Lee & McClure, of New York, and Messrs. Ballinger, Mott & Terry, of Galveston, Texas, for the Farmers' Loan and Trust Company.

Thereafter, on the 3d day of July, 1886, the Farmers' Loan and Trust Company filed its cross bill in said court, as equity suit No. 33, through its solicitors above named.

The aforesaid Central Company, Morgan's Company and the Metropolitan Company were made defendants in said cross-bill.

The litigation thereafter continued with parties and solicitors as indicated, except that Messrs. Turner, McClure & Rolston succeeded Messrs. Turner, Lee & McClure as solicitors for the Farmers' Trust Company; Messrs. Ballinger, Mott & Ballinger, and thereafter Messrs. Ballinger & Mott and Messrs. Willie, Mott & Ballinger succeeded Messrs. Ballinger, Mott & Terry as co-solicitors with Messrs. Turner, McClure & Rolston. Messrs. Farrar & Kruttschnitt and Messrs. Baker, Botts & Baker became respectively general counsel and attorneys for the receivers under order of court of date May 16, 1885.

213 Messrs. Benjamin G. Clarke and Charles Dillingham, appointed receivers under decree entered in said suit 21, of date April 6, 1885, at once duly qualified and assumed the management of the properties of said Central Company. They are now such receivers, and have continuously so been under said suits 21 and 33.

On the 12th day of April, 1887, a final decree was entered in said suits, from which decree an appeal was taken to the Supreme Court of the United States by the Morgan Company and the Central Company. The decree was affirmed by the Supreme Court on the 24th day of November, 1890, and the mandate of that court was filed in the clerk's office of said circuit court at Waco, on the 31st day of December, 1890.

On the 22nd day of April, 1891, the property of said Central railway was sold under the terms of said final decree, Messrs. Charles Moran, Henry K. McHarg and Cornelius B. Gold becoming the purchasers thereof, as purchasing trustees for the bondholders. The sale was confirmed by decree of date May 8th, 1891. The transfer of the property has not yet been made, no conveyance thereof has been executed, and the estate is still in the hands of the receivers pending the determination of matters incident to the winding up of the receivership, as provided by the final decree.

For convenience in the presentation of this report, I have thus stated the general situation of parties whose claims are now under consideration.

By agreement and consent of counsel made in open court before the master, it was ordered that *ex parte* affidavits should be received as evidence on questions relating to compensation, and also
214 that the record in said suits, including all proceedings, etc., be considered in evidence; and further that any oral testimony adduced by any one claimant should also be considered as evidence for all, as far as applicable.

It was also agreed that Receiver Dillingham should thereafter file with the master a statement of the gross receipts, and of the expenditures during the receivership to the date of hearing, and that the statements should show the amounts so received from the sale of town lots, such statement to be received as evidence in the consideration of this reference.

I herewith file the petitions for allowances filed with me June 8th, 1891, to wit: Petition of the Farmers' Loan and Trust Company, and therein of Messrs. Turner, McClure & Rolston; petition of Messrs. Ballinger, Mott & Terry, and therein of the firms of Ballinger, Mott & Ballinger, Willie, Mott & Ballinger, and Mott & Ballinger; the petition of the Metropolitan Trust Company of the City of New York, and therein of their solicitors, Messrs. Hillhouse & Alexander; the petition of Messrs. Farrar & Kruttschnitt; the petition of Messrs. Baker, Botts & Baker; the petition of Mr. Charles Dillingham, receiver, and that of Mr. Benjamin G. Clarke, receiver.

I also file a "statement of cash received and disbursed by receivers from April 18th, 1885, to June 8th, 1891, inclusive," and also report of oral testimony adduced at the hearings of these references, at Houston, June 8th, and at Waco, July 6th, 1891, and the objections by the Farmers' Trust Company to the claim for all allowances by the Metropolitan Trust Company, filed with me June 27th, 1891.

I duly prepared my report under the foregoing proceedings,
215 and after notice duly extended, the consideration thereof for such exceptions, etc., as might be offered before filing, came on to be heard at my office in Houston, Texas, on the 25th day of July, 1891, when appeared Messrs. W. B. Botts, E. B. Kruttschnitt, M. F. Mott and Thomas J. Ballinger. By request the report was withheld pending negotiations between parties relative to an adjustment between themselves of the matters involved in the reference.

After several adjournments the report again came up for consideration in my office, in Houston, Texas, on the 24th day of August, 1891, when appeared the aforementioned counsel, Messrs. Botts, Kruttschnitt & Ballinger, whereupon the counsel named stated in open court that the claims for compensation by the receivers, Clarke & Dillingham, and by the Farmers' Loan and Trust Company, trustee, by Messrs. Baker, Botts & Baker, Farrar & Kruttschnitt, Turner, McClure & Rolston, Ballinger, Mott & Terry, Ballinger, Mott & Ballinger, Mott & Ballinger, and Willie, Mott & Ballinger, had been adjusted with the purchasing committee hereinbefore mentioned. I therefore make no report upon these items.

Of the claims submitted for consideration, that of the Metropolitan Trust Company, of New York, alone stands for report under this reference, and as to that I report as follows: The Metropolitan Trust Co., of New York, does not claim any compensation further than to be allowed a sum sufficient to defray attorney's fees incurred by reason of its situation in this litigation. In October, 1884, the defendant Central Company conveyed to the Metropolitan Company all its property of every sort and description in trust to secure the payment of bonds to be issued and designated as "general
216 mortgage bonds." This conveyance was recorded in a number of counties in the State of Texas in which the property conveyed was situated, but not in all of such counties, and because not in all, no bonds were issued under it before the filing of the bill of Morgan's Company in April, 1885, the Metropolitan Company refusing to certify the bonds until the trust deed had been fully recorded. This trust company was made defendant in the Morgan's suit, as appears more fully by the original and amended supplemental bill filed in that case. Thereafter it was made defendant in the cross-bill filed by the Farmers' Trust Company. For the purpose of ascertaining and determining its legal status and responsibilities in these suits, it became proper and necessary to employ counsel. It is to be noted that this defendant asserts no rights, prays no relief except to be dismissed "with its reasonable costs and charges, etc." In the Morgan bill the complainant sought to be decreed all the rights of a bondholder under the general mortgage of which the Metropolitan Company was trustee. In the cross-bill it was made defendant to the end that the title vested in it by the aforesaid conveyance should be decreed subordinate to the title of the cross-complainant under the first and second mortgages or trust deeds. All of the Central Company's property covered by the first and second mortgages was conveyed to the Metropolitan Company under the general mortgage, and it was evidently the purpose of the Farmers' Trust Company in making the Metropolitan Company a defendant, to clear the title of the first and second mortgages, of any and all questions that might be raised by reason of the general mortgage. It appears from the evidence offered by the Farmers' Trust Company that conferences were held by its counsel in New York and the counsel of the Metropolitan Company. Counsel
217 for the Metropolitan Company attended the trial in Waco on the hearing, at which the final decree was rendered. While the duties and responsibilities of that defendant have not been burdensome, nor the duties of its counsel onerous, nevertheless it has been forced into this litigation and put upon its defense, it does not appear that they have funds applicable to the discharge of expenses incurred by reason of these matters, and it would seem to be inequitable that it should be required to defray such expense from its own resources.

I am of opinion, and so find, that it is entitled to be protected against such charges. It appears from the evidence that two thousand dollars would be a reasonable charge against it for counsel and solicitors' fees, and I recommend that a decree be entered making

an allowance to it of that amount for the purpose of defraying such indebtedness.

Respectfully submitted.

JOHN G. WINTER,
Special Master.

Endorsed: No. 21. Eq. Morgan's La. & Tex. R. R. & S. S. Co. *vs.* Texas Central R'l'y Co. *et al.* Master's report relative to compensation of solicitors, etc. Master's No., 321.

Filed Aug. 25, 1891.

J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy.*

218 A true copy.
Attest:
J. H. FINKS, *Clerk*,
By C. A. RICHARDSON, *Deputy.*

Waco, Texas, Jan'y 23, 1897.

219 *Proceedings in United States Circuit Court of Appeals.*

United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1896.

MAY 3, 1897.

(Extract from Minutes.)

CHARLES DILLINGHAM, Receiver,
vs.
AMEDEE D. MORAN ET AL., as Purchasing Trustee. } No. 556.

This cause being called the Honorable A. P. McCormick recused himself and retired from the bench.

November Term, 1896.

MAY 3, 1897.

CHARLES DILLINGHAM, Receiver,
vs.
AMEDEE D. MORAN ET AL., as Purchasing Trustee. } No. 556.

This cause was this day called and submitted to the court after argument by Mr. George Clark, for appellant, and by Mr. L. W. Campbell, for appellees.

220 November Term, 1896.

JUNE 23, 1897.

(Extract from Minutes.)

CHARLES DILLINGHAM, Receiver,
vs.
AMEDEE D. MORAN ET AL., as Purchasing Trustee. } No. 556.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Texas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court in this cause be, and the same is, hereby reversed, and this cause remanded to said circuit court with directions to overrule and discharge the motions attacking the receiver's accounts.

It is further decreed, that the appellees, Amedee D. Moran, Cornelius B. Gold, and Henry K. McHarg, be condemned *in solido* to pay the costs of this cause in this court, for which execution may issue out of said circuit court.

June 23, 1897.

221 United States Circuit Court of Appeals, Fifth Circuit.

CHARLES DILLINGHAM, Receiver, Appellant,
vs.
AMEDEE D. MORAN ET AL., as Purchasing Trustees, etc., *et al.*, Appellees. } No. 556.

Appeal from the United States circuit court for the northern district of Texas.

Before Pardee, circuit judge, and Newman, district judge.

NEWMAN, district judge, delivered the opinion of the court:

Charles Dillingham was the receiver of the Texas Central railway under order of the U. S. circuit court for the northern district of Texas, at Waco. He was appointed such receiver on the 4th day of April, 1885. On December 4th, 1886, the court directed that the receiver, Charles Dillingham, be placed on the pay-roll of the receivers (there was a joint receiver) at $150.00 per month, as an allowance upon his compensation as receiver in the cause; which allowance was to date from the possession of the receivers and to continue while Mr. Dillingham gave his personal attention to the business of the company until the further order of the court.

On the 22 day of April, 1891, the railway property was sold.
222 This sale did not embrace certain property which was not part of the railway proper, the parts not sold consisting of five lots, lands, notes, etc. At the time of the sale of the railway property under a compromise arrangement, the receiver, Dillingham, was paid $20,000. On August 28th, 1891, at the close of the decree in confirming the sale this occurs:

"That nothing in this decree contained is intended to affect or shall be construed as affecting the status of any pending or undetermined litigation in which said receivers appear as parties; such litigation shall continue to determination in the name of said receivers, with the right reserved to said purchasers, should they be so advised, to appear and join in any such litigation, and nothing in this decree contained is intended to affect or shall be construed as affecting the receivership of any of the property of the defendant railway company other than the property so transferred to said purchasers, possession of which said property other than that so

transferred is retained for further administration, subject to the orders of this court."

At the conclusion of a petition for a modification of the decree of confirmation this appears:

"It is further ordered, adjudged, and decreed that nothing contained in this decree is intended to effect or shall be construed as affecting the receivership of any of the property of the defendant railway company other than the property so transferred to said purchasers; possession of which said property other than that so transferred is retained for further administration, subject to the orders of this court, in like manner as if this decree had never been entered or rendered."

Dillingham continued to act as receiver up to April, 1895, apparently, from the record, attending to such matters as were
223 necessary to be disposed of in winding up the affairs of the receivership, and continued to draw and to pay himself the $150 per month until April, 1895.

After the railway was sold Receiver Dillingham filed regular quarterly accounts for each quarter, ending respectively on the first days of April, July, October, and January, for the years 1891, 1892, and 1893, and no objection or exception was made to the same, and the special master, John G. Winter, reported favorably upon the same and they were confirmed.

In March, 1894, the receiver filed with Special Master Winter accounts for the quarter ending September, 1893, and after notice by the special master to counsel interested in the matter a hearing was had upon these accounts. Counsel for the Texas Central Railway Company and for the purchasing trustees objected to the payment by Dillingham to himself of $150 per month for the months of April and May, 1893. In disposing of these objections the special master found that Dillingham had since the sale of the railway property continued to give, and was still giving, his personal attention to the management of the property in his custody, being all of the property of the defendant corporation not embraced in the sale of 1891. He also found that Dillingham had reported the $150 per month in his accounts regularly since the order, made in 1886; that these accounts had been regularly passed upon by the master after due notice to counsel, and that there had been no objection by any one at interest until the objection then being heard. He found that the parties to the litigation had taken no steps to close the receivership and had refrained from so doing pending the adjustment of the claims of the trust company and the Morgan Company
224 to the property remaining in the hands of the receiver, and that they had, without objection, on full notice acquiesced in the payment of the salary to Dillingham. He also found that Mr. McHarg, one of the purchasing trustees, had written a letter in March, 1894, to Receiver Dillingham in which he had recognized the fact that the receiver was under pay until discharged. The special master also found that the objections to the allowance of this amount to Receiver Dillingham were not well taken, and that the receiver was entitled to be compensated for his services and the re-

sponsibilities incident to his position as a bonded officer of the court, and he therefore allowed the items objected to, to wit, two items of $150 each, paid to Receiver Dillingham as salary for the months of April and May, 1893. He also found that the parties at interest, the Morgan Company, the trust company, and the Texas Central Railway Company, had made no objection to the compensation of Receiver Dillingham, although duly advised thereof. The special master further found that the receiver was entitled to receive this compensation until the courts shall revoke the order allowing the same. Similar objections were made to the allowance of the special master to Receiver Dillingham of his salary for the months of May, July, August, September, October, and November, 1893. These objections were also overruled by the special master stating in his report that as to these months he referred to the facts stated in his former report. The reports of the receiver, which embrace this same allowance to himself, were subsequently approved, without objection, up to April 1st, 1894. The accounts from April, 1894, to April 1st, 1895, it appears, were being heard by the special master on April 8th, 1895, when an order was passed referring the same to Abner S. Lathrop as special master.

225 The exceptions thus referred, together with an amendment, subsequently filed, attacked the right of Receiver Dillingham to receive the $150 per month after the sale of the railway property in 1891, and also charged that as he was vice-president of a bank in which the funds he controlled as receiver were deposited and that $1,000 per annum had been paid him as pretended compensation as vice-president of the bank, when, in fact, the payment of said $1,000 per annum was a mere pretence and was made by the bank and received by Dillingham as interest upon the fund deposited by him as receiver in the bank.

Special Master Lathrop filed his report on Sept. 26th, 1896, in which he found that Receiver Dillingham should be allowed a compensation of $150 per month from the time of the sale of the railroad up until April, 1893, for the reason that no objections were filed to his accounts, which embraced the allowance of this item to himself up to that time, and that under the rules of court they stood approved, but that from the time that objections were entered, namely, April 1st, 1893, down to the last amount allowed him, he found that he was not entitled to the allowance of $150 per month. He found: "That the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000, was intended as revoking the order of December 4th, 1886, allowing him $150 per month, and was intended as full compensation for the services up to the time the receivership terminated." He found, therefore, that the amount paid to the receiver from September, 1891, to April, 1893, had more than compensated the receiver for any labor he had performed from September, 1891, to the time of his report, and he therefore recommended that the exceptions to said receiver's re-

226 port, wherein he had retained $150 per month from April, 1893, up to April 8th, 1895, be sustained, and that the said

Dillingham be ordered to pay into the repository of the court the amount so received, as follows:

For 1893, nine months	$1,350.00
" 1894, twelve months	1,800.00
" 1895, three months	450.00

making in all $3,600.00. He found that the charge made against Dillingham, as to his receiving the $1,000 per year from the bank as interest, was not sustained by the proof and said, "I consider that the testimony clearly exonerates him from acting in any way in an improper manner with the funds in his hands belonging to said railway company, or that he has either directly or indirectly benefitted by the same. I would, therefore, recommend that the exceptions to his manner of using said funds be overruled."

This report was subsequently approved by the court, to which action of the court approving the same exceptions were duly reserved, and the question presented here for determination is the correctness of the action of the special master and of the court in requiring Receiver Dillingham to repay the $3,600.00 received by him after April, 1893.

The case as shown by the foregoing statement, presents somewhat remarkable facts. In the first place, those who are most interested in the matter of the receiver's compensation, appear to have made no objection at all to his receiving the $150 per month at any time, and next, conceding the purchasing committee to have been interested in this question of compensation, they stood by for years and allowed the receiver, Dillingham, to pay himself this amount, simply objecting during the last two years and having their ob-
227 jections overruled without any further action. No effort seems to have been made to have the receiver discharged; no motion appears to have been made to have the court reduce the amount of his compensation. The orders fixing his compensation originally were allowed to stand, the orders passed at the time of the sale of the road and the confirmation of the sale directing the continuance of the receivership stood unchanged, and yet after the receiver had proceeded until 1895, with all the responsibilities, obligations, and duties of the receivership upon him, and after he had retained, under the still existing order of the court, the amount allowed him by that order, a motion is made to require him to refund the money and pay it into the registry of the court, accompanied with damaging but wholly groundless charges affecting his honor and honesty. Why the receiver should have been permitted to go on and receive this $1,800 per annum without any movement on the part of those interested to change the existing status is difficult to understand, except upon the theory that his services were valuable and necessary. When the purchasing committee excepted to the master's report, and their exceptions were overruled, they seemed to have acquiesced all along, until suddenly in 1895 this proceeding was instituted. The payment of the $20,000 as a compromise for the receiver's services was proved to have been based on the understanding that the receivership was then to be wound up

and the receiver discharged, and did not in any way, so far as we can see, affect the order of the court making the monthly allowance to Dillingham, and if it could have been so construed, why was it not brought to the attention of the court at the time, certainly at the end of the first quarter after the sale, when the receiver's
228 accounts were filed? It was well known, or should have been well known, that he was receiving this compensation. His accounts were on file in the clerk's office showing that fact.

The finding of the special master is that up to April, 1893, the compensation should be allowed, because the accounts having been filed and there being no objection they stood presumably approved by the court under the rule. If the approval of the court is presumed up to April, 1893, why is it not equally true that the approval of the court is presumed to the receiver's continued receipt of this amount? If the compensation was to run at all after the sale of the railroad and the payment of the $20,000, there was no reason for stopping it in April, 1893. If it continued rightfully it continued by virtue of the original order allowing it in 1886, and it continued until the receiver was discharged, and so, instead of the approval of the court operating to justify the allowance up to April, 1893, and no longer, its effect would be to approve the allowance under the original order so long as Dillingham continued to act as receiver.

It is difficult to determine from the record exactly what services, beyond perfecting land sales and preserving the fund, the receiver rendered after the sale of the railway, but it is certainly true that if the purchasing committee, or any one interested, had moved in the matter before the court, the monthly compensation Dillingham was receiving, if too large, would have been reduced to the proper amount, or he would have been discharged and some other arrangement made for winding up the outstanding business. Nothing of this sort was done, however, and he was allowed to go on as receiver, with all the responsibilities attached to that position and to
229 the business in hand, and if entitled to compensation at all after the sale of the railway, we see no reason why he is not entitled to it up to 1895.

We are of the opinion that the report of the special master and the decree of the court below confirming the same were erroneous.

The decree of the circuit court is reversed, and the cause is remanded with instructions to overrule and discharge the motions attacking the receiver's accounts.

230 United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 229 pages, numbered from 1 to 229, inclusive, contain a true copy of the record and opinion of the court in the case of Charles Dillingham, receiver, appellant, *vs.* Amedee D. Moran *et als.*, as purchasing trustees, appellees, No. 556, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 12th day of February, A. D. 1898.

Seal United States Circuit Court of Appeals, Fifth Circuit.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

231 In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES DILLINGHAM, Appellant,
vs.
AMEDEE D. MORAN ET AL., Appellee. } No. 556.

It appearing that upon the application of Amedee D. Moran, Cornelius B. Gold, and Henry K. McHarg, appellees in the above cause, that the Supreme Court of the United States, on, to wit, March 1st, 1896, granted a writ of certiorari in said cause, commanding said circuit court of appeals without delay to send to said Supreme Court the record and proceedings in said cause, and it appearing that the said appellees filed a true and correct copy of the record and proceedings had in said cause in the circuit court and the circuit court of appeals accompanying their application for certiorari and which is now on file in said Supreme Court:

It is therefore agreed that said certified copy of the record and proceedings on file in the Supreme Court may be taken as a return of the writ of certiorari, and that this agreement be filed in the circuit court of appeals, so that the clerk of said court may send up a copy thereof with his return to said writ.

GEO. CLARK,
Solicitor for Chas. Dillingham, Receiver, Appellant.
L. W. CAMPBELL,
Solicitor for Amedee D. Moran et al., Appellees.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing is a true, full, and correct copy of an agreement of counsel filed in the cause named in said agreement on the 9th day of March,
232 A. D. 1898, as the same now remains on file in my office.

Given under my hand and the seal of said United States circuit court of appeals hereto affixed, at the city of New Orleans, this March 9th, 1898.

Seal United States Circuit Court of Appeals, Fifth Circuit.

J. M. McKEE, *Clerk.*

233 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which Charles Dillingham, receiver, is appellant, and Amadee D.

Moran, Cornelius B. Gold, and Henry K. McHarg, purchasing trustees, *et al.*, are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of Texas, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United
234 States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of March, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

235 [Endorsed:] Case No. 16,797. Supreme Court of the United States. No. 243. October term, 1898. Amedee D. Moran *et al.*, purchasing trustees, *vs.* Charles Dillingham, receiver. Writ of certiorari and return. Office Supreme Court U. S. Filed Mar. 12, 1896. James H. McKenney, clerk.

The within writ received this March 9, 1898, and in accordance with the agreement of counsel filed in the office of the clerk of the United States circuit court of appeals for the fifth circuit, a certified copy of which is hereto annexed and made part hereof, return is made that the certified transcript of the record of the cause named in the within writ, now on file in the office of the clerk of the Supreme Court of the United States, is a true and correct transcript of the record of said cause, as the same now remains of record in said United States circuit court of appeals for the fifth circuit.

Seal United States Circuit Court of Appeals, Fifth Circuit.

Given under my hand and the seal of said United States circuit court of appeals hereto affixed, at the city of New Orleans, this 9th day of March, A. D. 1898.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: Case No. 16,797. U. S. cir. ct. of appeals, 5th circuit. Term No., 243. Amedee D. Moran *et al.*, purchasing trustees, petitioners, *vs.* Charles Dillingham. Filed February 15, 1898.

FEB 15 1898
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1897.

No. 584 243

AMEDEE D. MORAN ET AL., Purchasing Trustees, Petitioners

vs.

CHARLES DILLINGHAM, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. .....

AMEDEE D. MORAN ET AL., Purchasing Trustees, Petitioners,

versus

CHARLES DILLINGHAM, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, the Justices of the Supreme Court of the United States:

The petitioners, Amedee D. Moran, Cornelius B. Gold and Henry K. McHarg, purchasing trustees, all citizens of the County and State of New York, file this, their applica-

tion for certiorari in the above entitled cause, and as grounds therefor would respectfully represent:

That on, to-wit, April 4th, 1885, on the application of Morgan's Louisiana & Texas Railroad & Steamship Company, the complainant in Equity Cause No. 21 of said Company vs. the Texas Central Railway Company, in the United States Circuit Court for the Northern District of Texas, at Waco, the Hon. Don A. Pardee, Circuit Judge, appointed Benj. G. Clarke and Charles Dillingham receivers of the railway properties belonging to the Texas Central Railway Company. (Order appointing receivers R. p. 3.) Said receivers having qualified, proceeded upon the performance of their duties, and on or about December 4th, 1886, Respondent Dillingham petitioned said Court to make him an allowance for his services, to be paid out of the current revenues coming into the hands of the receivers. Which petition having been presented to Hon. Don A. Pardee, the following order was entered:

"On considering the foregoing petition, it is ordered by the Court that the receivers be authorized and directed to place Charles Dillingham on the pay rolls of the receivers for the sum of one hundred and fifty dollars per month as an allowance upon his compensation as receiver in this cause. This allowance to date from the possession of the receivers and to continue while Mr. Dillingham gives his personal attention to the business of the company, or until the further order of the Court." (R. p. 7.)

The cause continuing on the docket of said Court, and having been subsequently consolidated with another cause known as the Farmers' Loan & Trust Co. vs. Texas Central Railway Company, No. 33, a final decree of foreclosure was

entered in said consolidated cause on April 12th, 1897, before the Hon. Don A. Pardee, Circuit Judge. (See Final Decree, R. pp. 8 to 23.)

The property having been offered for sale under the terms of said final decree was purchased by petitioners, as purchasing trustees, representing the first mortgage bondholders, and afterwards petitioners made application to said Circuit Court for possession of the property purchased by them, which petition having been presented to the Hon. Don A. Pardee, an order was entered thereon on August 28th, 1891, by said Circuit Judge. (See Petition and Order, R., pp. 24 to 30.)

A further petition was presented to said Court by these petitioners to modify the decree dated August 28th, 1891, which, having been presented to the Hon. Don A. Pardee, an order was entered thereon on November 4th, 1891, by said judge. (R., pp. 31 to 36.)

The property so purchased by these petitioners having been delivered to them under the terms of the final decree, and the respondent not having been formally discharged from his trust, filed his reports from time to time before the then master, Jno. G. Winter, and these petitioners, as purchasing trustees, appeared before said master and objected to the items of $150 per month, charged by the respondent as his compensation, after the sale and delivery of the property, from and after April, 1893. These exceptions were urged from time to time after said date as the reports came in, until said master filed his reports on the receiver's accounts, allowing to said respondent the sum of one hundred and fifty dollars per month, after such sale and delivery, so claimed by him under said order, as shown by said special master's reports (R. pp. 163 to 183). The reports having

been filed with the clerk of the court on April 8th, 1895, these petitioners filed exceptions thereto in court (R. pp. 37 and 38), which exceptions and the reports of the master were on the same day re-referred to Abner S. Lathrop, Esq., the standing master (R. p. 39). These petitioners filed amended exceptions to the receiver's account before Master Lathrop (R. pp. 39 to 43). After said reference, the master heard the parties and filed his report on September 26th, 1896, (R. pp. 192 to 196), and among other things he finds (R. p. 195):

"I consider from the testimony that the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000, was intended as revoking the order of December 4th, 1886, allowing him $150 per month, and was intended as full compensation for the services up to the time the receivership terminated. Since turning over the rolls, etc., to the purchasing trustees, the duties and labor of the receiver, as appears from the evidence, has not been arduous, and such services were contemplated when the fee of $20,000 was paid in. All the other parties to whom allowances were made so considered it, and they have made no further charge, except Special Master Winter, who was by special agreement allowed a further small compensation."

Master Lathrop recommends by the report that the objection to the reciver's reports, wherein he has retained the $150 per month from April, 1893, up to April 8th, 1895, be sustained, and that the said Dillingham be ordered to pay into the registry of the court the following amounts:

For 1893 nine months	$1,350.00
For 1894, twelve months	1,800.00
For 1895, three months	450.00
Total	$3,600.00

Upon the coming in of the report, the respondent filed exceptions thereto (R. pp. 196 to 199). The said exceptions and the master's report coming on to be heard before Hon. Chas. Swayne, one of the district judges, presiding, said report was in all things confirmed, and respondent was ordered to at once pay into the registry of the court the said sum of $3,600 (R. pp. 199 to 200). From which decree the respondent appealed to the Circuit Court of Appeals of the Fifth circuit, and the cause was submitted on oral arguments and printed briefs for both parties, and was heard by the Hon. Don. A. Pardee, presiding judge, and Hon. Wm. T. Newman, district judge. (See opinion, R. p. ——). After the cause had been submitted, and after petitioners' counsel had returned from New Orleans to his home in Waco, Texas, he prepared a motion to set aside the submission of the cause on the ground that Judge Pardee was recused, and sent said motion to the clerk, and at the same time wrote Judge Pardee a letter in reference to the motion, which letter motion and Judge Pardee's reply thereto are as follows:

"No. 556.
Chas. Dillingham
vs.
Amedee D. Moran, et al.

WACO, TEXAS, 5-5, '97.

"Hon. Don. A. Pardee, New Orleans, La.

"DEAR SIR:—When the above-entitled cause was taken on submission the other day by you and Judge Newman, I had not investigated the question of your disqualification, but since arriving home I have to some extent investigated the question in reference to the record, and I believe that you are disqualified under the statute. I would not like to have that question involved in the case, as it would cause

considerable delay and expense, and as the other cause, which is really a companion case to this one, which involves the right to the surplus fund in court, is set down for the 2d of June, I would prefer that you would set aside the submission in this case, and let it be submitted at the time the other cases come up in which you and Judge McCormick are recused.

"I would have made the suggestion at the time the case was submitted, but I had never investigated a question of this kind. I feel that it is my duty to advise you of my views on this subject before the case is decided. I have prepared a motion to set aside the submission, and sent the same to the clerk. I may be in error in regard to this, and have been at a loss to know how to reach the point, but have concluded that it is my duty, as stated above, to advise you of my views before a decision is reached.

"Yours truly,

"L. W. CAMPBELL."

No. 556.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FIFTH CIRCUIT.

CHARLES DILLINGHAM, RECEIVER, APPELLANT,

versus

AMEDEE D. MORAN, ET AL., as Purchasing Trustees, etc., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF TEXAS.

Now at this time come Amedee D. Moran, Cornelius B.

Gold and Henry K. McHarg, purchasing trustees, and move this Honorable Court to set aside the submission heretofore entered in the above entitled cause, and to set the same down for submission at a future day of this term for the following reasons, to-wit:

Because this case was taken on submission by Hon. Don A. Pardee, presiding judge of this court, and Hon. Wm. T. Newman, one of the district judges of this circuit, sitting with the presiding judge, constituting the court at which said submission was received, and appellees, after argument and submission, upon a re-examination of the record in the above entitled cause, and the Judiciary Act, and the decisions construing the same, are advised that the Hon. Don A. Pardee is recused and disqualified from sitting in this cause on the following grounds, to-wit: (1) While sitting at Circuit, as is shown by the record in this cause, he entered the order appointing the receiver, Charles Dillingham. (2) Fixed the compensation and allowance as receiver by the order of of December 4th, 1886. (3) Entered the final decree in this cause. (4) Entered the order of confirmation. (5.) Entered the order of August 28th, 1891, in this cause, and (6) entered the order of November 4th, 1891, in this cause. That said orders were entered upon petitions as shown by the record in this cause, and which of necessity required the judge in passing upon the petitions and entering the orders to decide the question of compensation of the receiver, Dillingham, and as to how long it should continue, and for what services it would cover, which was the same question, and in the same case, decided in the lower court, and which is brought to this Court for review, as is shown by the record in this cause. That counsel representing appellees neither at the time of argument, nor prior thereto had in-

vestigated the authorities with a view of determining this question, and was therefore not advised in the premises, and for this reason did not make the suggestion as to disqualification at the time.

Respectfully submitted,

L. W. CAMPBELL,

Solicitor for Moran, Gold and Henry K. McHarg, Appellees.

UNITED STATES CIRCUIT COURT,
FIFTH JUDICIAL CIRCUIT.
AT CHAMBERS.

DON A. PARDEE,
Judge.

NEW ORLEANS, La., May 7th, 1897.

L. W. Campbell, Esq., General Attorney Texas Central Railroad, Waco, Texas.

DEAR SIR—I have your letter of the 5th instant and note the contents. As a matter of strict law, both Judge McCormick and I are qualified to sit in the case of Dillingham vs. Moran, for neither of us participated in the rendition of the decree appealed from. Whether Judge McCormick is disqualified in the case of Morgan's Louisiana & Texas Railroad vs. Moran, continued over for a full bench, I cannot say; but I am reasonably clear that strictly I am not recusable in that case.

For some time and because it would not delay business,

both Judge McCormick and I have been in the habit of declining to sit in any cases of appeal wherein we have made former orders; when it comes, however, to embarrassing the business of the court by declining to participate, my impression is that we shall modify the habit.

Very respectfully yours,

DON A. PARDEE.

At the same time said letter was sent to Judge Pardee, the motion to set aside the submission was mailed to the clerk, by letter, as follows:

WACO, Texas, 5,-5, '97.

J. M. McKee, Esq., New Orleans, La.

DEAR SIR—I enclose you herewith motion in case No. 556, Dillingham vs. Moran, which was submitted before Judges Pardee and Newman. This motion is to set aside the submission on the ground that Judge Pardee is recused. I have written Judge Pardee on the subject of this motion. I wish you would file same and call Judge Pardee's attention to it. I do not wish to argue the motion. I will send Judge Clark's acceptance of service of the motion by succeeding mail so it will not be necessary for you to have him served. If such motions as these are required under the rules to be printed, I wish you would have it done for me and send me the bill. Yours truly,

L. W. CAMPBELL.

No response was ever received from the clerk as to what disposition was made of the motion. Judge Pardee, in his letter, having reached the conclusion that he was not recused, no further action was taken on the part of these petitioners,

and afterwards on, to-wit, the 23rd day of June, 1897, the opinion was delivered in said cause, reversing the decree appealed from, with instructions that the exceptions of these petitioners to the accounts of said Dillingham should be overruled. (R., p. ——). No motion for rehearing was filed or considered necessary in view of Judge Pardee's letter wherein he held that he was not recused in the case. Besides the opinion was delivered so late in the term, having been delivered only a few days before the Court of Appeals adjourned, nothing could be done by filing a motion for rehearing.

The writ ~~of error~~ is prayed for, first, upon the grounnd that Judge Pardee was recused, and second upon the ground tha the judgment of the Circuit Court of Appeals reversing the judgment of the lower court, is erroneous in that the decree appealed from should have been affirmed, and that that Court in reversing the Circuit Court has practically nullified the well established rule of this Court that a master's report of the facts will not be disturbed unless it clearly appears to be erroneous and without evidence to support it.

In support of our first ground, that Judge Pardee was recused and disqualified from sitting in this case on appeal, we cite the court to Sec. 3, of the Act to establish the Circuit Court of Appeals, approved March 3, 1891, and which reads as follows:

"That no justice or judge before whom a cause or question may have been tried in the District Court, or existing Circuit Court, shall sit on the trial or hearing of such cause or question in the Circuit court of Appeals."

See American Construction Co. vs. Jacksonville, T. K. & W. Ry. Co., 13 Sup. Rep. at page 764, (s. c. 148 U. S.

Sup. Rep., p. 372); U. S. vs. Lancaster, 5 Wheat. 434; U. S. vs. Emholt, 105 U. S. 414.

Referring to the opinion and record in this case, it appears that the contention was as to whether the order of December 4th, 1886, wherein Judge Pardee placed the Receiver Dillingham on the pay rolls at $150 per month was still in force or had been abrogated and set aside by the compromise wherein Dillingham was paid $20,000, as reported by Master Lathrop, who held that such order was abrogated by such compromise, and which report was confirmed by the decree appealed from; or, if not abrogated, was the receiver entitled to said $150 per month under the terms of the original order made by Judge Pardee, *after he had ceased to attend to the business of the railway company?* Not only this, but the subsequent orders of the court quoted in the opinion, all made by Judge Pardee, are passed on, and it is held thereunder that the receiver was entitled to continue to draw the $150 per month until he was finally discharged by the court. Indeed, Judge Pardee rendered every order incorporated in the record, including the final decree, and which form the subject of the appeal, except the particular order appealed from. Reading these orders and the opinion of the court, enforces the conclusion that the same "cause or question" in reference to Dillingham's compensation, and as to how long it might continue, and under what circumstances, that was tried before Judge Pardee at Circuit, was re-tried before him on appeal. No amount of argument or elaboration could make this question plainer than will appear by a simple review of the record and the opinion. (See the various orders made by Judge Pardee at Circuit; R. pp. 3, 6, 8, 24 and 31.)

We state further, that when the case was submitted on

oral argument in the Circuit Court of Appeals and Judge McCormick's attention was called to the fact that he had entered the order of April, 8th, 1895, referring the exceptions of these petitioners to the accounts of Dillingham and Master Winter's report thereon to Master Lathrop, he recused himself and declined to sit in the case (R. p. 39).

Further, that when the case referred to in Judge Pardee's letter to L. W. Campbell, about which he says: "Whether Judge McCormick is disqualified in the case of Morgan's Louisiana & Texas Railroad & Steamship Company vs. Moran, continued over for a full bench, I cannot say; but I am reasonably clear that strictly I am not recusable in that case," was submitted on June 2d, 1897, Judge Pardee did in fact recuse himself in that case, and the case was submitted on briefs and oral argument before Mr. Justice White, as presiding judge, and Judges Maxey and Newman, district judges, composing the court. Judge McCormick's action, recusing himself, took place in the presence of the respondent's counsel, and the fact that Judge Pardee recused himself finally in the case referred to in his letter is known to Mr. Justice White, and these matters are here mentioned as showing that there must indeed be grave doubt as to Judge Pardee's authority, under the law, to sit in this case.

This application is based upon the further ground, as stated above, that the Circuit Court of Appeals erred in deciding the case, has invaded the province of the trial court and master in deciding questions of fact, has set aside the report of the master and the decree of the Circuit Court approving same on questions of fact only, and has ignored and set aside the well established rule of this Court that "the master's conclusions have every reasonable presumption in

their favor, and are not to be set aside or modified unless there clearly appears to have have been error or mistake on his part." The Court of Appeals by so doing reaches the conclusion that the report of Master Lathrop and the decree of the Court confirming it are erroneous and proceeds to set aside both, and to remand the case to the lower court with directions to overrule and discharge the motions attacking the receiver's accounts. The Court's conclusions are reached, and its order is based solely and exclusively on questions of fact. Not an equitable rule, or the enunciation of a single proposition of law can be found in the Court's opinion.

It appearing that upon a re-reference of the Receiver's accounts, and our exceptions thereto to Master Lathrop that he found the facts in favor of these petitioners, it remains to be determined whether, under the well recognized rules of this Court, the Circuit Court of Appeals were justified in substituting its judgment and estimation of the testimony for that of Master Lathrop, and of the Circuit Court confirming his report.

The rule above referred to, showing what weight is given to the report of a master on his findings of fact, is clearly stated in the case of Camden vs. Stuart, 144 U. S. 104, in this language: "His conclusions have every reasonable presumption in their favor, and are not to be set aside or modified unless there appears to have been error or mistake on his part."

Judge Pardee, in passing upon a master's report in the case of Missouri Pacific Railway Co. vs. Texas & Pacific Railway Co., 33 Fed. Rep., at page 806, says: "The law of the

case, as reported by the Master, is not questioned. The evidence is so conflicting that in order to reach a finding of the real facts some testimony must be rejected as untruthful. In such a case, *unless plain error is established, the finding of a master should be as conclusive as a verdict of a jury.*"

In 14 Am. & Eng. Ency. of Law, at page 940, it is said: "As a rule, however, it may be stated that *the findings of fact by the master are conclusive unless clear mistake or fraud is shown.*" The author cites in support of his statement of the law numerous decisions, some from this Court, and many from state courts of last resort. This proposition is so elementary, and appears to be so well settled in this Court that a further citation of authorities would, we think, be altogether unnecessary, but we quote below what the courts are holding on this question from a few cases, but we find none to the contrary:

"Findings of fact by a master in chancery, to whom, by consent of parties, a case is referred to find the facts, are conclusive in the absence of anything to show that they are unsupported by the evidence." Davis vs. Schwartz, 15 S. Ct. 237. 155 U. S. 631.

"Conclusions of fact of a master and trial court, on conflicting evidence in an equity case will not be disturbed on appeal, unless some obvious error is pointed out." Warren vs. Keep, 15 S. Ct. 83. 155 U. S. 265.

"The findings of a master on matters of facts are *prima facie* correct, and should not be overruled in an appellate court unless without evidence to sustain them." Gay Mfg. Co. vs. Camp, 65 Fed. Rep. 794.

"A referee's finding, like that of a jury, will not be disturbed if fairly warranted by the evidence." McClure vs. Times Pub. Co. (Pa. Sup.) 32 A. 293.

"A referee's findings of fact are not reviewable on appeal." McEwen vs. Louchiem (N. C.) 20 S. E. 519.

"A finding of a referee will not be disturbed, though the court might have reached a different conclusion, where it cannot be said with reasonable certainty that the finding was erroneous." D. G. Burton Co. vs. Cowan (Sup.) 30 N. Y. Sup. 317.

"The findings of a referee on conflicting evidence will not be disturbed on appeal." Douglas vs. Halstead, 30 N. Y. S. 592.

"The findings of a trial court will not be disturbed unless they are contrary to the clear preponderance of the evidence." Senour Mfg. Co. vs. Clarke (Wis.) 71 N. W. 883.

"Where a decree is based on conflicting evidence, the finding of a chancellor will not be disturbed." Chrislip vs. Teter (W. Va.) 71 N. W. 98.

"Where the appellate court cannot say that the findings of the trial court are clearly against the preponderance of the evidence, the judgment will be affirmed." Clausen vs. Hale (Wis.) 71 N. W. 122.

"Where a report of a referee was confirmed by the court, the judgment will not be reversed on questions of fact, unless clearly against the weight of the evidence." McCallan vs. Buckstaff (Wis.) 71 N. W. 604.

"A finding of fact on conflicting evidence will not be disturbed on appeal." Requa vs. Irwin (Sup.) 44 N. Y. S. 771.

"A finding of fact by a trial court will not be set aside unless against the clear preponderance of the evidence." Henderson vs. Adams (Utah) 48 p. 398.

"Conclusions of the referee on questions of fact, confirmed by the court, are in the nature of special findings, and, if supported by the evidence, will not be reviewed." Demsey vs. Schawacker (Mo. Sup.) 38 S. W. 954.

"The findings of an auditor or master, confirmed by the lower court, are to be taken as presumably correct, and will be reversed only in case of obvious error." Richardson vs. Van Auen, 5 App. D. C. 209.

"The Supreme Court cannot review conflicting evidence." Koons vs. Beach (Ind. Sup.) 45 N. E. 601.

"A finding by a circuit court on conflicting evidence as to the proper compensation of a trustee, not being flagrantly against testimony, will not be disturbed." Chenault vs. Madison County Court (Ky.) 38 S. W. 432.

"A master's finding of fact, on evidence sufficient to go to a jury, will not be disturbed on appeal." White vs. Wright, (Pa. Sup.) 36 A. 154.

"Findings of a court of equity, or by a referee, on conflicting evidence will not be disturbed, unless manifestly against the weight of evidence." Swyer vs. Salt Lake City Copper Mfg. Co. (Utah) 48 p. 311.

"A referee's findings of fact will not be disturbed unless

against the clear preponderance of the evidence." Hinz vs. Van Dusen (Wis.) 70 N. W. 657.

"Findings of a referee, especially when approved by the court below, having evidence to sustain them, will not be disturbed." Philadelphia Co. vs. United Gas Imp. Co., (Pa.) Sup. 36 A. 742.

"Where the master and the chancellor agreed with respect to disputed items in an account, and there is legal evidence to sustain them, they will not be reviewed." Still vs. Burkett (Tenn.) Ch. Ap. 39 S. W., 347.

"A finding by a master on conflicting evidence, approved by the Court, will not be disturbed unless clearly wrong." Hall Co. vs. Dresser (Mass.) 46 N. E., 420.

"The finding of a master that the rail of a railway track was so worn as to render its use negligence, made on conflicting testimony, and an examination of the rail by him in person, with counsel, will not be reviewed." Clyde vs. Richmond D. R. Co. (C. C.) 59 Fed. Rep., 394.

"Findings of fact by a referee on conflicting evidence, confirmed by the court, will not be disturbed on appeal." Hannaman vs. Karrick, 33 P. 1039.

"A referee's finding on conflicting evidence, involving the credibility of witnesses, stands on the same footing as a verdict." Briggs vs. Hiles (Wis.) 58 N. W., 752.

"Findings of a referee will not be disturbed on appeal unless against the manifest preponderance of evidence." Schute vs. Jones, 28 N. Y. S., 1072.

"A decree of a chancellor on conflicting evidence will not be set aside where there was any evidence to sustain it." Vaughan vs. Commercial National Bank, (Miss.) 18 So., 270.

"Findings of fact in equity will not be reversed unless they are against the weight of evidence." So. Com. & Savings Bank vs. Koeln, 60 Mo. App., 79.

"Where there is legitimate evidence fairly tending to establish a fact, the findings thereon by a special master will not be disturbed unless fraud or curruption is shown." Walston vs. Smith, 32 A., 486.

Bearing the above well settled rule in mind we turn to the findings of fact reported by Master Lathrop and upon which the decree of the Circuit Court is based, and to the testimony, so that this Court may determine whether there is evidence to support such findings.

The real foundation for the master's report (and the decree of the Circuit Court confirming it) that Dillingham should be required to return the money taken between April, 1893, and April, 1895, a period of two years, at $1,800 per year, or a total of $3,600, is the master's finding of fact as follows:

"I consider from the testimony, (1) that the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000, was intended as revoking the order of December 4th, 1886, allowing him $150 per month, and was intended as full compensation for the services up to the time the receivership terminated; (2) since turning over the rolls, etc., to the purchasing trustees the duties and labors of the receiver, as appears from the evidence, has not been ardu-

ous; (3) and such services were contemplated when the fee of $20,000 was paid in. All the other parties to whom allowances were made so considered it, as they made no further charge, except Special Master Winter, who was by special agreement allowed a further small compensation. I do not consider that I have a right to go behind the receiver's reports, which were reported on by the master and not objected to, as above stated. Therefore, the said receiver, by receiving $150 per month, from September, 1891, to April, 1893, has been much more than compensated for any labor he has performed as such receiver from September, 1891, up to the present time." (R. p. 195).

The first of the above findings by the master is: "That the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000, was intended as revoking the order of December 4th, 1886, allowing him $150, and was intended as full compensation for the services up to the time the receivership terminated." This finding is clearly supported by the testimony. Indeed, there is practically no evidence to the contrary, as will appear from the following summary of the evidence heard on this point by Master Lathrop:

The final decree of foreclosure provides:

"Second. Upon confirmation of the sale and delivery of title, the purchaser shall pay in cash such sums as may be ascertained, on due reference to and report by the master, sufficient to pay off and satisfy all the indebtedness of the receivers, incurred by them in this cause, including all the expenses and costs of the receivers' administration of the property, all claims and demands adjudged against them growing out of their operation of the property, all receivers'

certificates heretofore ordered to be issued and remaining unpaid, all indebtedness for pay-rolls, materials and supplies due by said receivers, *and also the compensation of the receivers, and their solicitors.*" (R. pp. 19 and 20).

Soon after the sale and confirmation, and pursuant to the above-quoted provisions of the decree of foreclosure, on June 8th, 1891, the receiver, Dillingham, and his attorneys and other parties having claims, filed their petitions for allowance with Master Winter. Some of these petitions are in the record. (R. pp. 117 to 120). We quote the receiver's petitition (italics ours):

"Petition of Receiver Dillingham for compensation. United States Circuit Court for the Northern district of Texas.

"MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY, COMPLAINANT,

versus

TEXAS CENTRAL RAILWAY COMPANY, DEFENDANT.

NO. 21, EQUITY.

"Now before John G. Winter, special master in the above-entitled cause, comes Charles Dillingham, receiver in the

above-entitled cause, and prays that said special master will *make to him such an allowance for his services as receiver in the above entitled cause, from the date of his appointment until his discharge*, as to said master may seem just and proper, and appearer prays for all further and equitable relief.

"FARRAR & KRUTTSCHNITT,
"*Solicitors for Chas. Dillingham.*"

The claims presented by the petitions for allowance created a spirited controversy, which required the taking of considerale testimony and several hearings before the master, the time covering a period of several months, before the controversy thus engendered was finally determined. In the mean time, a large amount of correspondence took place betweeen the local attorney of the trustee, and the attorneys representing the purchasing trustees in New York, and a few telegrams passed between Master Winter and the New York counsel. At the several hearings before Master Winter, stenographic reports of the testimony were taken and filed with his report upon said petitions. These petitions and the correspondence between the attorneys in Texas and those in New York in reference to these claims were introduced in evidence before Master Lathrop. In addition thereto, we introduced in evidence the testimony of Henry K. McHarg, one of the purchasing trustees, and the receipt of Charles Dillingham, besides taking the oral testimony of a number of other witnesses, including Charles Dillingham, all of which appears in the record.

The report of Master Winter shows that it is made under the provisions of Article 18 of the final decree quoted above. The master states further: "At the hearing, claims for com-

pensation and allowonce were presented as follows." Then he sets out the claims of various parties, including the claim of Charles Dillingham, receiver, and on page 6 of the report he says:

"After several adjournments the report again came up for consideration in my office, in Houston, Texas, on the 24th day of August, 1891, when appeared the aforementioned counsel, Messrs. Baker, Kruttschnitt and Ballinger, whereupon counsel named stated in open Court that the claims for compensation by the receivers, Clark and Dillingham, and the Farmers' Loan & Trust Company, trustee, by Messrs. Baker, Botts & Baker, Farrar & Kruttschnitt, Turner, McClure & Rolston, Ballinger, Mott & Terry, Ballinger, Mott & Ballinger and Willie, Mott & Ballinger *had been adjusted with the purchasing committee hereinbefore mentioned.* I therefore make no report upon these items." (See Supplemental Transcript of Record, pages 1, 2 and 6.)

The foregoing finding shows that claims for allowance, including Dillingham's, had been compromised with these petitioners. We introduced in evidence before Special Master Lathrop Dillingham's receipt for $20,000.00, which reads as follows:

"CIRCUIT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF TEXAS.

Morgan's Louisiana & Texas Railroad & Steamship Company vs. Texas Central Railway Company et al.	Original Bill.

The Farmer's Loan & Trust Company } Cross Bill.
vs.
Texas Central Railway Company et al. }

Received of Messrs. Moran, Gould and McHarg, purchasing committee, the sum of twenty thousand dollars ($20,000.00) *in full of my fees and charges as receivers of the Texas Central Railway Company*, as per agreement. Dated Houston, Texas, Sept. 14th, 1891.

(Duplicate) CHARLES DILLINGHAM, Receiver."

(R. pp. 108 and 109.)

This receipt was offered in connection with the deposition of one of the petitioners, Henry K. McHarg, who testified among other things as follows:

"Second Interrogatory—This is a proceedings on behalf of the purchasing committee, who object to certain items of $150.00 each, charged in the accounts of Charles Dillingham, as receiver, covering a period from September, 1891, to April, 1895, aggregating between six and seven thousand dollars. The committee claiming that they paid Mr. Dillingham $20,000.00, on or about September 14th, 1891, in full of his services as receiver until his discharge. Now, you will please state if you remember the circumstances under which said $20,000.00 was paid, and how it was paid, and your understanding as to what such payment covered."

"Answer—I recollect the fact of our company having paid $20,000 in full for Mr. Dillingham's services, and supposed at the time that it covered them entirely."

"Third Interrogatory—You will please state if you had any attorney, or attorneys, looking after the claim of said Dillingham and others? If so, please state who acted as your attorney, or the attorney for the committee, and state who had control of such matters, you or your attorney, and who, if any one, negotiated said settlement. State all these matters as fully as you can."

"A—Messrs. Turner, McClure & Rolston were attorneys for the Trust company and for the committee. They had full control of all matters connected with the litigation, and negotiated the settlement."

"Fourth Interrogatory—State whether or not you had ever at any time, either prior or subsequent to the payment of said $20.000.00, had any agreement or understanding with Mr. Dillingham as to his right to receive any additional compensation over and above said $20,000.00? Please state fully."

"A—The committee or myself never had any agreement or understanding with Mr. Dillingham as to his right to receive any sum in compensation for his services in excess of the $20,000.00."

"Fifth Interrogatory—State whether or not you or the committee ever authorized or empowered any person to agree to give Mr. Dillingham any additional compensation for his services? Please state fully."

"Answer—Neither the committee nor myself ever authorized or empowered any person to agree to give Mr. Dillingham any additional compensation for his services."

"Sixth Interrogatory—Please state the names of the persons who constituted the purchasing committee to purchase the Texas Central Railway Company. State whether or not such persons are bondholders secured by the first mortgage on the Texas Central Railway Company, which mortgage was foreclosed?

"Answer—The purchasing committee to purchase the Texas Central Railway Company consisted of Messrs. Charles Moran, Cornelius B. Gould and myself. They either represented large holders of the first mortgage bonds or were themselves *bona fide* holders.

"Seventh Interrogatory—Please state what your understanding was, and from whom you derived your information, as to what the $20,000 was paid Mr. Dillingham for? That is, what services was he to perform? Please state this fully.

"Answer—My understanding was that the $20,000, which seemed to me an extravagant amount at the time, was paid Mr. Dillingham in full for his services. Could not state from whom I derived my information; presume it came from our attorneys." (R. pp. 90 to 92).

We also introduced in evidence the testimony of the former master, Jno. G. Winter, who among other things testified as follows:

"Question—Do you remember whether you made a report on these claims or not?

"Answer—The report in this case will show.

"Question—Look and see if that is your report. You made that report, did you not?

"Answer—Yes, sir. Report in master's No. 321, filed August 25th, 1891, was made by me and signed by me, and I recollect the circumstances.

"Question—Is that report on the compensation of the receivers and the attorneys?

"Answer—Yes, sir; the report speaks for itself. It appears to be as you say. It speaks for itself, however.

"Question—'After several adjournments, the report again came up for consideration in my office at Houston, Texas, on the 24th day of August, 1891, when appeared the aforementioned counsel, Messrs. Botts, Kruttschnitt and Ballinger, whereupon the counsel named stated in open court that the claims for compensation by the receivers, Clarke and Dillingham, and by the Farmers' Loan & Trust Company, trustee, by Messrs. Baker, Botts & Baker, Farrar & Kruttschnitt, Turner, McClure & Rolston, Ballinger, Mott & Terry, Mott, Terry & Ballinger, Willie, Mott & Ballinger, and Mott and Ballinger, had been adjusted with the purchasing committee hereinbefore mentioned. I therefore make no report upon these items.' Now I wish you to explain what was stated before you by counsel, what claims had been adjusted?

"Answer—I could not state what transpired there more fully than what you have just read. There was quite a gathering in my office at the time. This is all that was stated. When the reference was called, that statement was made by some one of the gentlemen, but I do not know who.

"Question—Do you know if the claims set fourth in the petitions upon which that report is made, the petitions filed by the parties respectively in master's No. 321, are the ones you have examined?

"Answer—I suppose so, the report will show." (R. p. 86 to 88.)

Mr. Dillingham testified in his own behalf before Master Lathrop as follows:

"Q—You received in September, 1891, from these same people that are objecting here $20,000.00, didn't you, as compensation as receiver?

'A—I received from the Farmer's Loan and Trust Company, I think.

"Q—No, it is the purchasing trustees?

"A—The question of compensation came up, and the compensation of the receivers and the lawyers and master came up, and it was referred to a special master, and before the hearing the Farmer's Loan and Trust Company, I suppose it was—it was through their attorneys—came in and made a proposition to us all to pay us a lump sum, which was accepted and mine was $20,000.00." (R. p. 54.)

On further examination respondent testified:

"Q—I will ask you to explain fully the matters and circumstances and details under which this sum of $20.000 00 was paid you by the Farmer's Loan and Trust Company for these parties here.

"A—The litigation was about to be closed and the mortgaged property had been sold, and the question of compensation to the receiver and the attorneys in the case come up, and the court ordered it referred to the master for report. The master had ordered a hearing or called for a hearing, but at that hearing the attorneys got together and it was suggested that it might be fixed out of court, and there was negotiations between Baker Botts & Baker on the one side, and .....

"Q—Baker, Botts & Baker represented whom?"

"A.—Themselves and me. And Mott & Ballinger, Ballinger, Mott & Terry, Mott & Terry, Mott's firm who had been engaged in the litigation, and Farrar, Jones & Kruttschnitt, and finally they arrived at a ..... the Farmers' Loan and Trust Company, to pay us all a lump sum.

"Q—Each?

"A—Each, and that proposition was accepted and they paid it.

"Q—What was that $20,000.00 intended as compensation for by the parties who paid it, and by you who accepted it?

"A—It was intended as compensation as receiver up to that time.

"Q—Up to that time?

"A—Yes, sir."

"Q—Was anything said at that time as to further pay for the receiver?

"A—No, sir.

"Q—What time was this $20,000.00 paid in 1891?

"A—I cannot tell, I understand Mr. Campbell has a report there that shows it.

"(By Mr. Campbell.) It shows September 24th, 1891.

"A—Yes, sir." (R. p. 58.)

He also testified further:

"Q—Was there any understanding or agreement or stipulation when the $20,000.00 was paid as to how it was to be treated—if it was to be in full for all services rendered and to be rendered in the future?

"A—No stipulation that it was for services to be rendered.

"Q—It did not cover services to be rendered?

"A—No sir.

"Q—Is it not a fact that the understanding was to the contrary—that you were to be compensated for matters with reference to the receivership thereafter, and that you were to continue to draw the $150.00 per month until the receivership was closed finally?

"A—I do not know that the question was discussed. I think at that time it was supposed the thing would be closed up at once." (R. pp. 58 to 62.)

The correspondence between Col. M. F. Mott, local counsel of the Farmer's Loan and Trust Company, and Messrs. Turner, McClure and Rolston, New York counsel, was attached to the depositions of Mr. McHarg, and among other things appear the following facts:

Special Master Winter having had the matter of compensation of the various parties under consideration, on July 22nd, 1891, had concluded a draft of his report, and wired to Messrs. Turner, McClure & Rolston, as follows:

July 22nd, 1891.

Dated Iredell, Texas.

To Turner, McClure & Rolston,
22 Williams Street, New York.

Draft report too late to send your copy. Draft comes up for consideration Houston, Texas, Saturday; Mott notified; wire me Houston if desired. Your claims allows Mott fifteen, Metropolitan two, Botts Farrar twenty-five hundred extra, Clark three, Dillingham thirty, all thousand.

JOHN G. WINTER. (R. p. 98.)

On July 25th, M. F. Mott, representing the Farmer's Loan and Trust Company in Texas, wrote to Turner, McClure & Rolston in substance as follows:

"After full conference with parties here, we find a settlement as matter of compromise can be made upon following terms, to-wit: Dillingham, receiver, $20,000.00 in addition to what he has received; Farrar & Kruttschnitt, including compensation as counsel for Mor-

gan's company five thousand in addition to what they have received; Baker, B. & B., ten thousand additional. All of Mott's firms seventy-five hundred. These offers of compromise are predicated upon immediate acceptance and payment; if not accepted, Dillingham, Clarke, and Farrar & K. will file exceptions that allowances to them are inadequate, and other parties will claim full amounts allowed by master. We advise acceptance of offer. Think they are the best you can get. See Clarke in person. Of course offers are made as a compromise and without prejudice. M. F. MOTT." (R. p. 98.)

On July 27th, M. F. Mott wrote to Messrs. Turner, McClure & Rolston again as follows:

"To McClure & Rolston,
22 Williams Street, New York.

"Winter writes me that he will change his report so as to allow Dillingham five thousand per annum, less amounts received; B., B. & B. three thousand per annum. This increases somewhat their allowances, but does not affect compromise offers. Wait for my letter of yesterday. M. F. MOTT." (R. p. 99.)

In a letter from M. F. Mott to H. B. Turner, of July 26th, 1891, in reference to what Dillingham claimed, he uses this language:

"First. As to Dillingham, he was disappointed in the amount of the award, and insisted that it should not be less than $30,000.00 in addition to the amounts already received. He was present with his attorney who had prepared objections to the draft of the report

on several grounds, and was ready to present and argue the same. The proposed report gave him in the neighborhood of twenty thousand dollars additional, with which he was not satisfied, and he claims ten or twelve thousand in addition to the allowance. I think that you and I know pretty well that he would get all he claims at the end of a litigation. It was with much difficulty he could be induced to make the offer. He seemed entirely confident and regards a ten thousand dollar abatement in his claim as a great concession. I think he was in serious earnest." (R. p. 102.)

On July 24th, 1891, Herbert B. Turner, of the firm of Turner, McClure & Rolston, wrote to Charles Moran, Esq., chairman of the purchasing trustees, a letter, in which he says:

"My correspondent telegraphs me that he has had a full conference with the parties at Houston, and was authorized to submit the following figures for a settlement as a matter of compromise: Dillingham, receiver, twenty thousand dollars. * * * These offers, he says, are predicated upon immediate acceptance and payment, and are the results of a long conference. It is necessary to know what will be done by the committee, because the parties in interest desire to file exceptions against the referee's report if an arrangement cannot be made; Dillingham, Clarke and Farrar & Kruttschnitt will file such exceptions on the ground that the allowance made to them is inadequate. The other parties, unless the settlement is made, will claim the full amounts allowed by the master, as above suggested. We suppose you know that this matter will be in the hands of Judge Pardee for settlement, unless an arrangement is made. Of

course it is desirable to make an arrangement, but you must yourself judge whether you are likely to fare better or worse by bringing the matter before the judge. Of course these matters must be arranged before possession can be obtained. Please get the opinion of the committee, and let us hear from you as soon as practicable.

"Very truly,

"HERBERT B. TURNER." (R. pp. 107 and 108).

Mr. Dillingham, in addition to his testimony, introduced in evidence a letter written to him on March 12th 1894, by Henry K. McHarg, one of the purchasing committee, in which letter, among other things, he says:

"I also notice that Mr. Winter has made a report up to December 31st, 1892, inclusive, of the balance on hand. I supposed that when the road was sold his compensation as special master ceased, and that in fact there was no one under pay except yourself, as receiver, until your discharge." (R. p. 111).

This letter is relied on as an admission by Mr. McHarg, one of the petitioners, that Dillingham was to receive his compensation until his final discharge, but Mr. McHarg, in his testimony, explained this letter to the entire satisfaction of Master Lathrop and of the Circuit Court. Referring thereto, he says:

"I did not write the letter with the idea he was entitled to the $150 per month, or to any additional sum over the $20,000, for I considered that amount an outrage upon our committee to pay at the time, but we seemed forced to do so and had to submit. In fact, my letter was sent to him simply to try and limit our payments in the future, not with

the idea or thought that he was entitled to anything, and as you will notice was written on March 12th, 1894, when the Texas Central Railway Company had assumed control of the property September 25th, 1891, or nearly two and a half years after we had been in possession." (R. pp. 92–93).

The foregoing is a fair statement of all the testimony, pro and con, introduced before Special Master Lathrop on the point as to whether the $20,000.00 was paid in compromise settlement of the claim set up in Dillingham's petition for "such an allowance for his services as receiver in the above entitled cause from the date of his appointment until his discharge." That there was a compromise the Circuit Court of Appeals distinctly finds in its opinion in the following language: "At the time of the sale of the railway property under a compromise arrangement, Receiver Dillingham was paid $20,000.00." That it was a compromise of the claim set up in his petitition for final compensation is a fact so patent on its face that we are unable to conceive how it could be determined otherwise, and that this petition *demanded compensation from the time of his appointment until his discharge*, it plainly speaks for itself. It cannot be said that Master Lathrop's finding that the compromise settlement was intended as full and final compensation until the receivership terminated is erroneous or without evidence to support it, but on the contrary it clearly appears that such finding is supported by the preponderance of the testimony. May an Appellate Court set aside a finding of fact by a master supported as this appears to be by the weight of the evidence? Would this Court set aside that report? Is there really a rule whereby we may be governed in judging what will be done with a master's report? We think such rule is firmly established in this Court and closely adhered to.

This Court will not disturb a master's report of facts unless it is clearly wrong.

The second of the above facts found by the Master is: "Since turning over the rolls, etc., to the purchasing trustees, the duties and labors of the receiver, as appears from the evidence, has not been arduous." And further that "by receiving $150.00 per month from September, 1891, to April, 1893, has been much more than compensated for any labor he has performed as such receiver, from September, 1891, up to the present time." These findings are clearly supported by the testimony, but they are not essential facts conducing to show whether or not the compromise agreement was entered into, but show clearly that Mr. Dillingham was not by the master and Circuit Court dealt with harshly and that he has no equity in his claim to the money and has been more than fully paid for all services. The testimony on this subject is likewise conflicting, but preponderates in favor of the master's findings. On this subject Judge Newman, in the opinion, says: "It is difficult to determine from the record exactly what services beyond perfecting land sales and preserving the fund the receiver rendered after the sale of the railway." The period from April, 1893, to April, 1895, is the time to which special attention should be directed. For the period from September, 1891, to April, 1893, is not involved in this contention, as Dillingham received the $150.00 per month during that time, and Master Lathrop reported against us for that amount because the reports of Master Winter approving the receiver's accounts for that period had not been excepted to in time. This money was taken and appropriated by Dillingham without the knowledge of the purchasing trustees, and therefore before they had begun to object to his accounts.

Dillingham received for his services during that period about $2,850.00. It is only the $3,600, covering the last two years that is in dispute here. Dillingham practically did nothing during this period except to hold in a bank, of which he was a large stockholder and vice president, about $40,000 of these funds. Mr. Gibbs, land commissioner, testified as follows:

"Mr. Dillingham has had nothing whatever to do with said lands and lots since the sale above mentioned, in so far as giving me instructions in any respect, or my making reports to him may be concerned; in fact, have had no instructions whatever from him since April, 1893." (R. p. 116).

This testimony shows that Mr. Dillingham had nothing whatever to do with the lands and lots after April, 1893. His accounts for the same period show that little or nothing was being done by him. Outside of receiving the money sent him by the attorneys, who, he says, collected the few land notes that were collected, he did nothing during this period except hold the funds in his bank and disburse to himself each quarter the sum of $450. (See his reports during this period; R. pp. 164, 171, 175-6, 177-8 to 185). Besides, during this period, he paid to one Kidd, out of the funds in hand, $600 to assist him in his arduous duties. (R. pp. 172-4).

Master Lathrop having heard all the evidence, concluded that the compromise agreement, as claimed by us, was established by the testimony; but he further found that Dillingham, by receiving the $150 per month from September, 1891, to April, 1893, had been much more than compen-

sated for all the services he had performed since the road was delivered to the purchasers down to the present time. In all seriousness, can it be said that these findings of fact are without evidence to support them? Did he commit an error in finding these facts? If so, where is the error, and where are the facts which condemn these findings? The master heard all the evidence; much of it was oral. Were not he and the Circuit Court much nearer the witnesses, and had they not better opportunities to judge of these facts than an appellate court could possibly have? And is not the recognition of this fact, the real basis of the rule that the master's findings are entitled to so much weight?

The third of the above facts found by the master is "and such services were contemplated when the fee of $20,000.00 was paid in." This finding is clearly supported by the testimony. This is a finding that such small services as Dillingham is shown to have actually performed were contemplated when the $20,000.00 was paid him. Our discussion of the first findings above makes this clear. It will be recalled that the compromise was of the claim set up in Dillingam's petition for allowance wherein he *demanded pay from the time of his appointment to his discharge.* He agreed to accept in satisfaction of this claim $20,000.00. These petitioners agreed to pay said sum in satisfaction of said claim. It was to get rid of that claim that this large sum of money was paid. Their minds met and the money was paid. Dillingham was not claiming in his petition compensation down to the time he filed his petition or down to the time of the hearing before the master, *but until his discharge.* It was that claim that was compromised and settled by paying $20,000.00.

Mr. Dillingham's counsel at the hearing asked him the

question: "Is it not a fact that the understanding was to the contrary, that you were to be compensated for matters with reference to the receivership thereafter, and that you were to continue to draw the $150.00 until the receivership closed finally," to which Mr. Dillingham answered: "I do not know that the question was discussed. I think at that time it was supposed the thing was to be closed up at once." (R. p. 61-2.) In other words Mr. Dillingham understood when he compromised the claim that the $20,000.00 was all he was to get, because it was supposed the thing was to be closed at once. And the evidence shows that to all intents it was closed at once so far as relieving him of any duties as receiver. And we are in perfect accord with Judge Newman when he says it is difficult to tell what Dillingham did after he turned over the road.

Mr. Dillingham, in his receipt to these petititioners, recites that it is "in full of my fees and charges as receiver of the Texas Central Railway Company as per agreement." (R. p. 108-9.) All the evidence shows that the agreement whereby he became possessed of the $20,000.00 was a compromise of his claim for compensation until his discharge. Mr. Dillingham's attention was called to the receipt, and he did not attempt to explain it. (R. p. 62-3.) Can it be said that the finding of Master Lathrop that the services, if any, actually performed by Mr. Dillingham were not contemplated when the $20,000.00 was paid him? If so, where are the facts in the record which condemn them? Mr. McHarg testified that he understood it covered all his services. The master took his statement, which is in perfect accord with Dillingham's petition and receipt. A finding to the contrary would have been clearly against the the weight of the evidence.

As the Circuit Court of Appeals, in writing its opinion, seems to have been under the misapprehension that we made no objections to the receiver's accounts until April, 1895, we desire to make that point clear. On this subject Master Lathrop finds:

"No objections were made to said reports and to the payment of said $150 per month, until said master took under consideration the reports allowing to said receiver $150 per month for the months of April and May, at which time L. W. Campbell, attorney for the Texas Central Railway Company. Charles Moran, Henry K. McHarg and Cornelius B. Gold, purchasing trustees, excepted to the allowance of said payment to Dillingham. That after that date the same parties objected to the reports filed containing the charge of $150 per month paid to said Dillingham, and on April 8th, 1895, they filed objections to all the payments of $150 per month to said Dillingham from September, 1891. None of said master's reports since September, 1891, have been approved by the court, *but I consider that the reports filed prior to April, 1893, were, by the rules of the court, approved*, no objections being made thereto." (R. pp. 194-195).

The master having found that we filed proper objections before Master Winter, and afterwards before the court, to all of the receiver's accounts since April, 1893, and no exceptions having been made to said findings in the lower court by respondent, and there being no assignments of error calling in question the correctness of these findings, it was not deemed necessary that a full report on that subject be brought up in the record.

The reports of Master Winter, covering the period from July 1st, 1893, to March 31st, 1895, which covers the entire period for which we recovered judgment against respondent, except the three months from April 1st to June 30th, 1893, are found in the record on pages 165 to 185, inclusive. The report for the quarter ending September 30th, 1893, was not filed until April 1st, 1895; (R. p. 171). The report for the quarter ending December 31st, 1893, was not filed until April 3d, 1895; (R. p. 176). The report for the quarter ending March 31st, 1894, was not filed until April 4th, 1895; (R. p. 178). The report for the six months covering April, May, June, July, August and September, 1894, was not filed until April 4th, 1895; (R. p. 181). And the report for the six months including October, November and December, 1894, January, February and March, 1895, was not filed until June 22nd, 1895; (R. p. 185). And the final account was not filed until May 16th, 1895; (R. p. 185).

All these reports show upon their face that petitioners objected to the item of $150 per month being charged by the receiver, and exceptions were filed to these reports, and to all items showing this charge, by these petitioners, on April 8th, 1895, which was long before some of the reports were filed, and in less than thirty days after any of them were filed. (R. pp. 37–38).

The only doubt remaining is as to whether exceptions were filed before Master Winter to the receiver's account for the quarter ending June 30th, 1893. Special Master Winter, in his report for the quarter ending June 30th, 1893, (R. p. 163) makes it appear that no objections were urged against the receiver's account for that quarter before him, but he uses this language in his report for the succeeding

quarter: "Mr. Campbell joined with me in an examination of the accounts aforesaid, and said that he had no objections or exceptions to make thereto, except to the two items of $150 each for salary paid to Receiver Dillingham for the months of April and May, 1893, etc." (R. p. 166). And Master Lathrop expressly finds from the record before him, and so reports to the court, that we excepted to all charges of $150 per month in the report for that quarter, and the findings not having been excepted to, and there being no objections raised to it by any assignment of error, we deem that it is unnecessary to further discuss that question.

Equity Rule 83 provides that, "Parties shall have one month from the time of filing the report to file exceptions thereto; and that if no exceptions are filed within that period by either party the report shall stand confirmed on the next rule day after the month is expired." It was upon this rule Master Lathrop found that as we had not filed exceptions to the reports of Master Winter on the receiver's accounts prior to April, 1893, we were concluded and estopped from going behind these reports, but the foregoing statement shows that the reports of Master Winter for the years 1893, 1894 and 1895 were nearly all filed just a few days before we filed our exceptions thereto, and that we excepted to all of those accounts before him. As an illustration: It is shown above that Master Winter's report on the receiver's accounts for the quarter ending September 30th, 1893, was not filed in court until April 1st, 1895, seven days before we filed our exceptions thereto in the court, (R. p. 171). And his report for the quarter ending December 31st, 1893, was not filed in court until April 3d, 1895, (R. p. 176), five days before we filed our exceptions thereto in

court, and his reports for 1894 and 1895, as shown above, were filed about the same time, or later.

This statement is made with the above particularity, so that in reviewing the opinion of the Circuit Court of Appeals it will not be necessary to verify this statement by the record every time we refer to this matter.

It having been shown above that the findings of Master Lathrop upon which the decree of the Circuit Court is based are clearly supported by the evidence, and that we in time excepted to all accounts since April 1. 1893 We invite this court to review with us the opinion of the Circuit Court of Appeals, so that it may judge whether any reason has been shown for setting aside said findings of fact.

That court finds that under a compromise arrangement Receiver Dillingham was paid $20,000 00. And further on in the opinion quotes Master Lathrop's finding of fact "that the compromise was intended as revoking the order of December 4th, 1886, allowing him $150.00 per month, and was intended as full compensation for the services up to the time the receivership terminated." That court also finds that the report was subsequently approved by the Circuit Court. Although this finding of fact in the record, and which of necessity went to the foundation of the case, still the opinion leaves it unchallenged. It is nowhere held that the finding is either not supported by the evidence or that the compromise agreement is illegal, invalid or contrary to public policy. Still the court reverses the decree appealed from and orders the exceptions to be dismissed. Allowing the master's findings to stand and

tacitly conceding their correctness, the court evades their force and effect by a general argument of confession and avoidance, and in support of this argument recites a large number of facts, nearly all of them taken from reports filed by the former Master Winter on the receiver's accounts for the years in question, and which reports were duly excepted to by us, never approved by any court, but were set aside and the accounts re-referred to Master Lathrop, and are supported by no evidence in the record, and which are of necessity, under the circumstances, binding upon nobody. What is not taken from the findings of Master Winter are extracts from orders entered by Judge Pardee subsequent to the compromise agreement providing that the court still holds possession of the property not sold.

The court in reciting the unconfirmed reports of former Master Winter lays stress on the letter written by Petitioner McHarg to Dillingham, of date March 24th, 1894. This letter was written long after we had begun to object to Dillingham's accounts. Besides Mr. McHarg fully explained this letter and testified that it was not written "with the idea he was entitled to the $150.00 per month, or to any additional sum over the $20,000.00." (R. p. 92.) Dillingham nowhere claimed that he relied on this letter as a reason for continuing to act as receiver. The master and Circuit Court passed on this evidence and found that it was fully and satisfactorily explained. No estoppel arising from this letter is pleaded.

These extracts from the reports of Master Winter,

and from the orders subsequently made, consume almost the entire opinion of the court.

The court having stated the case as above indicated, finds that "those who are mostly interested in the compensation of the receiver appear to have made no objection at all to his receiving the $150.00 per month at any time." It already appears very plainly that these petitioners, representing the first mortgage bond holders, and that these bond holders have a judgment against the Texas Central Railway Company amounting to over $4,000,000.00, $3,000,000.00 of which is unpaid and unsatisfied. (R. p. 8 to 22.) The decree appealed from in this case shows that the $3,600.00 required to be refunded by Dillingham is to be paid into court and to constitute a part of the funds of the receivership. (R. p. 199.) The record shows that the Morgan's Louisiana and Texas Railroad and Steamship Company has a judgment against the Texas Central Railway Company for about one-fifth or one-sixth of this amount. (R. pp. 8 to 23.) These are the only parties at interest, except the defunct corporation, the Texas Central Railway Company, which can have no interest whatever in this controversy; therefore, it cannot be said that those mostly interested stood by and made no objections at any time, for the purchasing trustees are the ones mostly interested of all parties.

The opinion proceeds: "Conceding the purchasing committee to have been interested in this question of compensation, they stood by for years and allowed the Receiver Dillingham to pay himself this amount, simply objecting during the last two years, and having their objections overruled without further action." This is

a misconception of the record. The testimony of Mr. McHarg, a member of the purchasing committee, shows that all the committee reside in New York; that they knew nothing of this matter until they discovered, about 1893, that Dillingham was taking out of the funds this $150.00 per month. They then begun to actively object thereto, and have kept up the fight until the present time. They have never abandoned their rights since they discovered they had any.

The court say further: "No effort seems to have been made to have the receiver discharged." Under the compromise agreement reported by Master Lathrop, the receiver should not have been discharged until the Circuit Court thought proper to do so, and the fact that the receivership was allowed to continue, is not only no evidence that Dillingham did not enter into the compromise agreement whereby he received the $20,000.00 in a lump, without delay or litigation in full of his fees and charges. and in lieu of the $150.00 per month, but is entirely consistent therewith.

The court say further: "No motion appears to have been made to have the court reduce the amount of his compensation. The orders fixing his compensation originally were allowed to stand." The amount of Mr. Dillingham's compensation was fixed by himself with those who, under the final decree, were required to pay it. The testimony shows that he contended for $30,000.00, and finally accepted $20,000.00 in addition to the amounts he had already received, and we do not understand that where an order, judgment or decree, in favor of any party, including a receiver, has been

compromised, that it is necessary to have a formal order entered by the court showing that it has been compromised in order to protect the rights of the parties. If this order be not made, but it be proven that the claim had been compromised, and the order in fact revoked in consideration of a large sum of money, no court would hold that the parties were estopped because a formal order of the court had not been entered showing this fact. It therefore cannot be said that the order fixing his compensation originally was allowed to stand. Under the master's finding it never had any substantial existence after the claim of Dillingham was compromised.

The court say further: "The orders passed at the time of the sale of the road, and the confirmation of sale, directing a continuance of the receivership, stood unchanged." The orders referred to by the court are those quoted in the former part of the court's opinion. One of these orders was entered about the time the compromise was entered into, and the other some time thereafter. The effect of these orders is simply to show that the court retained jurisdiction over the small amount of property, such as a few scattering town lots, and a few tracts of land, that was not foreclosed and sold out under the decree of foreclosure. We do not understand there was any reason why these orders should be revoked, or in the least interfered with in order to preserve the contract rights of these petitioners, and to hold Receiver Dillingham to his contract of compromise. But what effect these orders really have upon this case, especially during the last two years, is hard for us to understand. The testimony of Mr. C. C. Gibbs shows that every acre of land and every town lot held by virtue of the above-mentioned orders

was sold out under execution by the United States marshal on November 7th, 1893, and purchased by himself and Chas. Hamilton. He further testifies: "Mr. Dillingham has had nothing whatever to do with said lands and lots since the sale above mentioned, in so far as giving me instructions in any respect, or me making any reports to him, may be concerned; in fact, have had no instructions from him whatever since April, 1893." (R. p. 116). The above mentioned orders quoted by the Circuit Court of Appeals could certainly have no effect on these lands and lots, long since sold under execution. Mr. Dillingham seems to have had the remaining duty of holding in a bank, of which he was vice-president and a large stockholder, an average sum of about $40,000.00, and which was used by his bank in its business, and the additional duty of receiving from the attorneys, who collected what few land notes that were outstanding, the money so collected. With this state of facts in view, we hardly think that this court will hold it was necessary in order for us to preserve our rights to have the orders of August 28th and November 4th, 1891, revoked or abrogated, as the Circuit Court of Appeals seems to think.

The court proceed, and say: "And yet after the receiver had proceeded until 1895 with all the responsibilities, obligations, and duties of the recivership upon him, and after he had retained under the still existing orders of the court the amount allowed him by that order, a motion is made to require him to refund the money, and to pay it into the registry of the court." As shown above, we did not wait until the receiver had proceeded until 1895, as supposed by the court. We begun to fight him as soon as his report, beginning with April 1st, 1893, was filed with Master Winter, and this fight has been continued ever since. Where the

court gets its understanding that we begun the fight in 1895 is, we suppose, from the fact that we filed a general objection to all of his accounts when Master Winter finally filed them in court and his reports thereon, about April, 1895, but his and Master Lathrop's reports show that we had been objecting to all of them since April, 1893.

It has been clearly shown above that the receiver was not burdened with "the responsibilities, obligations and duties of the receivership" to any considerable extent. Master Lathrop finds, and the Circuit Court approved this finding, that all the responsibilities, obligations and duties performed by Mr. Dillingham after the road was turned over was much more than compensated for by his receiving the $150.00 per month from September, 1891, to April, 1893, amounting to about $2,850.00, and it cannot be true, if Master Lathrop's finding of fact is allowed to stand, that this money was retained under the still existing orders of the Court, for it has been shown above that the order of December 4th, 1886, was abrogated by mutual agreement by the only parties having any interest whatever therein.

The court say further that our motion was "accompanied with damaging but wholly groundless charges affecting the honor and honesty of Mr. Dillingham." We charged that he received $1,000.00 per year from his bank and that this was received in consideration of the $40,000.00 deposited by him in the bank. This, like other charges frequently made in the courts, was not proven, but it does not follow as the court seems to think, because we have assailed his honor and honesty that Mr. Dillingham should be excused from standing up to his contract of compromise, whereby he agreed to accept, and did receive, the $20,000.00 in compromise of his

claim for compensation from the date of his appointment until his discharge, and when he gave a receipt showing that it was "in full of my fees and charges as receiver of the Texas Central Railway Company." It may be conceded that we did him an injustice, but that is a different question from the one the court was called to decide, and the one we are now presenting. That question was finally decided against us by Master Lathrop, confirmed by the Circuit Court, and from which finding no appeal was prosecuted by any party, and the Circuit Court of Appeals does not make it appear as to what relevancy that branch of the case can have to the proposition under discussion.

The court say: "Why the receiver should have been permitted to go and receive this $1,800.00 per annum without any movement on the part of those interested to change the existing status is difficult to understand, except upon the theory that his services were valuable and necessary." The witness McHarg fully explained his reason for not excepting to these items until 1893, which was, because he did not know anything about it, and that he begun to make this fight as soon as he was apprised of the fact that Mr. Dillingham was claiming the $150.00 per month in addition to the $20,000.00, and the move was made just as soon as this information came to these petitioners. And it cannot be presumed in the face of this record that he was allowed to draw the $1800.00 per annum on the theory that his services were valuable and necessary, because the record shows that for the last two years he performed no services. There was no land or town lots on hand. They had been sold out, and he had the $40,000.00 in his possession, and the judge who wrote the opinion seemed perplexed to discover from the record what services Mr. Dillingham did

perform, even after the road was turned over, to say nothing of the last two years.

The Court say further: "When the purchasing committee excepted to the master's report, and their exceptions were overruled, they seem to have acquiesced all along until suddenly in 1895 this proceeding was instituted." The court seems to be under the impression that we only begun this fight in 1895, when we filed our exceptions in the court, but the reports of Master Winter and of Master Lathrop clearly show that we begun this fight when the report, beginning with April, 1893, was filed, and continued our objections thereto, having followed this up with a reiteration in the court. This matter was not suddenly sprung in 1895. The fight had been going on for two years prior to that date. The record clearly shows this.

The court further say: "The payment of the $20,000.00 as a compromise of the receiver's services was proved to have been based on the understanding that the receivership was then to be wound up and the receivership discharged, and did not in any way so far as we can see affect the order of the court making the monthly allowance to Dillingham." The finding of Master Lathrop to the effect that "the compromise was intended as revoking the order of December 4th, 1886, allowing him the $150.00 per month, and was intended as full compensation for the services up to the time the receivership terminated," is left unnoticed by the Circuit Court of Appeals. It is nowhere held that that finding is without evidence to support it, yet in the face of that finding the court says that the compromise was based upon the understanding that the receivership was to be then wound up and the receivership discharged, and did not in any way

so far as they could see affect the order of the court making the monthly allowance to Dillingham.

The court, in making the above statement, has evidently gotten its understanding of the evidence from the testimony of Mr. Dillingham, but Mr. Dillingham did not testify, nor did any other witness, that the payment of the $20,000.00 "was based upon the understanding that the receivership was then to be wound up and the receivership discharged." Mr. Dillingham, in reference to his continuing to draw the $150.00 per month, says: "I do not know that the question was discussed; at that time *I think it was supposed* that the thing was to be closed up at once." (R. p. 62.) Please note the language. At the time he was testifying, he seemed to think it was supposed the thing would be closed up at once—an exceedingly vague statement to be substituted in the place of the solemn finding of a master, supported by the confirming decree of the Circuit Court. Mr. Dillingham could not have supposed, and did not testify that the thing was to be closed up at once, for he says: "When the railroad was turned over to the trustees, there was left in my hands a large amount of lands, town lots, notes that had been given for town lots and lands that had been sold; the lands and town lots for sale, and the notes for collection, and I had general charge of the collection of these notes, and disposition of lands and lots and looking after the property left in the hands of the receceiver," and that he had about $40,000.00 in cash left on hand. (R. pp. 49 and 50.) As stated above, he nowhere uses the language that there was an understanding about these matters. And the further statement of the court that the payment of the $20,000.00 did not affect the drawing of the $150.00 per month, is shown by Mr. Dillingham's own testimony to have been not dis-

cussed. Indeed, it was altogether unnecessary to discuss that question, because Dillingham's petition for compensation, and that of all the other claimants which was being pressed at the same time, and Mr. Dillingham's receipt for the $20,000.00 showed very plainly what was claimed by him and what was being compromised.

Mr. McHarg testified contrary to the court's statement above (R. p. 105). Dillingham's petition (R. p. 109) and his written receipt (R. p. 108) testified to the contrary, and the correspondence between the attorneys introduced and read in evidence testified to the contrary (R. pp. 98 to 107). So it cannot be said that this money was paid upon that understanding, and without affecting the order of the court making him the monthly allowance, unless it be true that the solemn finding of a master, approved by the Circuit Court, based upon the preponderance of the testimony, are utterly worthless and must be set aside, and the mere thoughts and suppositions of an interested witness, contradicted by his own written statements, be accepted in their place.

But it may be granted that he and all parties mutually agreed in supposing that the thing was to be closed up at once. Can that fact have the effect of discharging Mr. Dillingham from his solemn engagement to accept the large sum of $20,000.00 in full of his fees and charges, without delay, expense or litigation, in lieu of the pittance of $150.00 per month?

If this supposition formed an essential inducement, and was one of the substantial conditions upon which the compromise agreement was entered into, and was broken without his fault, that fact, if true, might have been pleaded by

Mr. Dillingham as an equitable ground for asking relief from his contract. But he puts forth no such defense. He nowhere asks to be relieved from his contract. Unlike the Circuit Court of Appeals, he pleads no confession and avoidance. His sole defense is a general and vigorous denial of our facts.

The court further say: "And if it can be so construed, why was it not brought to the attention of the court at the time, certainly at the end of the first quarter after the sale when the receiver's accounts were filed?"

This has been fully explained by Mr. McHarg, who testified that he did not know that Mr. Dillingham was claiming or drawing this $150.00 per month, until he opened this fight. Estoppel is not pleaded. If it were pleaded and insisted upon, there is no element of estoppel in the facts of this case. Suppose it be conceded that the master's finding is correct, as the court says, and that the $20,000.00 was paid in compromise of Dillingham's entire services, and suppose it be conceded that we knew Dillingham was drawing this $150.00 per month, and raised no objections whatever thereto until April, 1893, is there any element of estoppel in that kind of a proceeding? Is Dillingham put in any worse position? Is he not put in a better position by the sum of $2,850.00 by our failing to object? Because, if the agreement was made as the master reported, he was clearly not entitled to the $2,850.00, and he got that solely because we did not object in time. The entire $3,600.00 was taken in the face of our objections, and while we were objecting.

The court proceed: "The finding of the special master is that up to April, 1893, the compensation should be allowed,

because the accounts having been filed, and there being no objections, they stood presumably approved by the court under the rule. If the approval of the court is presumed up to April, 1893, why is it not equally true that the approval of the court is presumed to the receiver's continued receipt of this amount?" The above statement and inquiry do the court an absolute injustice. It is based upon the idea that the Circuit Court was continually approving these accounts, and the judge writing the opinion doubtless did not have in mind the equity rule that all reports of a master in chancery stand approved if not excepted to within thirty days. That was the ground upon which Master Lathrop found against us on our exceptions to the money taken prior to April, 1893. Dillingham's reports were during that period regularly filed with Master Winter. He passed upon these reports and allowed the claim of $150.00 per month, and filed these reports in the Circuit Court, and as we did not except to these allowances within the thirty days allowed under the equity rule, they stood approved, not by any presumptive action of the court, but absolutely as a rule of the court. There is no logic in the suggestion that because they were approved by a rule of the court on account of our failure to except within thirty days that the approval of the court is presumed to the receiver's continued receipt of this amount, after we begun to object. This could not be presumed, because we excepted within the proper time, and have followed up these exceptions continually. Both of the master's reports and the entire record show this.

The court say further: "If the compensation was to run at all after the sale of the road, and the payment of the $20,000.00, there was no reason for stopping it in April, 1893. If it continued rightfully,

it continued by virtue of the original order allowing it in 1886, and it continued until the receiver was discharged, and so, instead of the approval of the court operating to justify the allowance up to April, 1893, and no longer, its effect would be to approve the allowance under the original order so long as Dillingham continued to act as receiver." Under the master's finding, it did not continue rightfully after the $20,000.00 was paid, and this money was taken wrongfully and in violation of Mr. Dillingham's contract of compromise with the committee until discovered in April, 1893, and it does not follow that it should continue until 1895 because we had slept on our rights under a rule of the court and had lost the $150.00 per month from September, 1891, to April, 1893, because we had failed to file exceptions to the reports of Master Winter allowing Dillingham's accounts within thirty days.

The court proceed: "It is difficult to determine from the record exactly what services, beyond perfecting land sales and preserving the fund, the receiver rendered after the sale of the railway." We agree with the court that it is difficult to discover from the record what services Mr. Dillingham did perform during this time. But whatever they were, Master Lathrop finds were more than paid for as shown above.

The court say further: "But it is certainly true that if the purchasing committee, or any one interested, had moved in the matter before the court, the monthly compensation Dillingham was receiving, if too large, would have been reduced to the proper amonnt, or he would have been discharged and some other arrange-

ment made for winding up the outstanding business." The compensation that Mr. Dillingham was entitled to receive had already been paid him, and there was no necessity of appealing to the court until we discovered that Mr. Dillingham was violating his contract. When this discovery was made we began to object in the proper manner, keeping up these objections, and finally filed our objections in the proper court, and secured an order holding Mr. Dillingham to his contract, and this is as much as any one would be called upon to do. Petitioners had every reason to suppose that Mr. Dillingham would stand up to his agreement. The fact that we did not object in time to save some of the money, is no reason why we should be deprived of the right when we discovered that he was violating his contract, and save as much as possible of the money that he was wrongfully taking.

It is very true that if any one interested had moved in the matter the Circuit Court would have reduced the compensation. That is precisely what was done. We objected just as soon as we got the information. The Circuit Court promptly acted and the result of its action was to not only find the existence of the compromise agreement, as claimed by us, but it found further that Dillingham had received much more than all his services were worth by taking the $2,850.00. This was in effect reducing his compensation to an average of about $67.90 per month, covering the entire period of forty-two months, from September, 1891, to April, 1895. And yet while the Circuit Court did this upon a full hearing of the evidence, the Court of Appeals reverses the decree when the opinion intimates that

that would have been the proper course to pursue. And when the Circuit Court pursued that course, the Appellate Court reversed its decree, and in doing so, ignored another settled rule of this court, "that the compensation to be allowed a receiver for his services, and those of his counsel, is largely discretionary with the court from which he derives his appointment, and its action will not be disturbed unless the discretion is abused." Stuart vs. Boulware, 133 U. S. 78. (s. c.) 10 Sup. Ct. Rep. 242.

It is nowhere claimed by the Circuit Court of Appeals, or by Dillingham or his counsel, that the allowance of $2,850.00 was inadequate, or that the Circuit Court abused its discretion in holding that he was more than compensated for any services that he performed after the road was turned over to these petitioners, by receiving said sum of $2,850.00.

The court say: "Nothing of this sort was done, however, and he was allowed to go on as receiver with all the responsibilities attached to that position." The master's findings show that he was to go on and perform such small duties as was required at his hands for the $20,000.00.

And the court say further: "And if entitled to compensation at all, after the sale of the railway, we see no reason why he is not entitled to it up to April, 1895." The only way the court can arrive at the conclusion that Dillingham was entitled to compensation up to April, 1895, is by ignoring the findings of Master Lathrop to the effect that "the compromise was intended as revoking the order of December 4th, 1886,

and was intended as full compensation for the services up to the time the receivership terminated." We concede that by substituting the thoughts and suppositions of Dillingham for all the other testimony in the record, and for the findings of Master Lathrop, and for the decree of the Circuit Court, this conclusion is logically reached that he is entitled to compensation up to April, 1895.

The court having disposed of the case in the manner above indicated, say: "We are of the opinion that the report of the special master, and the decree of the court below confirming the same, are erroneous. The decree of the Circuit Court is reversed and the cause is remanded with directions to overrule and discharge the motions attacking the receiver's accounts." It has been with the utmost difficulty that we have been able to find upon what ground the decision rests. It must rest, if at all, upon the proposition that Mr. Dillingham's thoughts and suppositions are entitled to greater consideration than the testimony of all the other witnesses, all the facts and circumstances adduced in evidence, the conclusions of Master Lathrop and the decree of the Circuit Court confirming his conclusions.

If this be true, the opinion is correct. If the decree of the Circuit Court, the report of the master and the overwhelming preponderance of testimony against Mr. Dillingham be given the credence that is ordinarily given by this court to the findings of a master, and a preponderance of the testimony supporting them, then the opinion of the Circuit Court of Appeals is logically erroneous, and should be quashed by this

court, and a decree entered here affirming the decree of the Circuit Court.

It appears from the above review of the opinion of the Circuit Court of Appeals that its decision rests upon the proposition that the acts, conduct and acquiescence of the interested parties in failing to move promptly, estop them from objecting to the claim of the receiver for the $150.00 per month taken after they begun to object. conceding that Master Lathrop's findings of fact establishing the compromise agreement are correct. We have already shown that this agreement is not only supported by the evidence, but that the Circuit Court of Appeals do not find to the contrary. Conceding the existence of the compromise agreement, is an Appellate Court justified, in the face of the record in this case, in attempting to avoid it, by arguing the facts in the records, which to its mind may tend to show acquiesence and estoppel? We answer. No. Why? Because, first, respondent did not plead estoppel and acquiescence in answer to our objections; second, the master's attention was not called to any such defense; third, the master did not find any facts bearing on that kind of defense: fourth, respondent did not except to the master's report on any such ground; and fifth, the assignment of error present no question of acquiescence or estoppel. The respondent has never set up in this case a plea confessing the contract of compromise and attempting to avoid its force and effect by relying upon estoppel and acquiescence. His sole defense has been a vigorous denial only.

Test the above statement in the order made:

First. Estoppel is no defense unless specially pleaded and relied on.

Ulman vs. Ieager, 67 Fed. Rep. 980.

Mabury vs. Louisville, &c., Co., 60 Fed. 645.

Warren vs. Providence Tool Co., 33 Atl. Rep. 876.

Bannister vs. Miller, (N. J. Ch.) 32 Atl. Rep. 1,066.

No such plea can be found in the record.

Second and Third. Facts relied on as a defense must be called to the attention of the master, or they are waived.

Topleff vs. Topleff, 145 U. S. at page 173.

Gay Mfg. Co. vs. Camp, 68 Fed. Rep. 67.

The master's attention was called to no such defense, and he made no report on estoppel and acquiescence.

Fourth. All objections to a master's report not taken by special exceptions thereto, are waived.

Sheffield, &c., Railway Co. vs. Gordon, 151 U. S. 285.

Respondent's exceptions to the master's report do not complain either that the proof showed that petitioners were estopped from insisting on the compromise agreement, or that the master erred in failing to find and report conclusions of fact on that point.

Fifth. A ground of objection to the decree appealed from, if not urged by assignment of error, is waived, and an appellate court have no right to consider such question.

Bogk vs. Gassert, 149 U. S. 738.

Grand Trunk Ry. vs. Ives, 144 U. S. 408.

Dufour vs. Long, 4 C. C. A. Rep. 663; (s. c.) 54 Fed. Rep. 913.

As often stated, respondent has no assignment of error which contends that the petitioners are estopped to rely on the compromise agreement on account of delay and acquiescence, or on any ground.

Let it be conceded, however, for a moment and for the sake of argument only, that there were no sufficient obstacles to the consideration of the facts in the record which the Circuit Court of Appeals, in effect, hold are sufficient to overcome the contract of compromise and make out a case of waiver, acquiescence or estoppel. Estoppel, if its existence is shown in this record, must be in the nature of estoppel *in pais*. This must arise by silence with knowledge, continued for such a length of time as to raise a conclusive presumption that petitioners had agreed to the taking of the money; or that respondent, by petitioners' silence and failure to object, has been placed in a worse condition, and for these reasons petitioners are estopped to object to his retaining the funds in question. The facts bearing on petitioners' delay and knowledge are, that petitioners all reside in the city of New York, some two thousand miles from Texas; that their counsel in the settlement of the compromise were Turner, McClure & Rolston, New York attorneys; that petitioners knew nothing of the fact that Dillingham was taking this money until about April to June, 1893; that the compromise was made and money paid to Dillingham in September, 1891, about one year and seven months before petitioners begun to except; that there is no proof that Master Winter extended notices of the filing of the receiver's accounts with him to the petitioners or their counsel, and his reports show that he did not; that neither Master Winter's reports nor the receiver's accounts filed with them show on their face that Dillingham was taking this

money; and no fact was proven to put them upon inquiry.

Young vs. Board of Com'rs, 51 Fed. 585.

The facts upon the question as to whether the one year and seven months delay put Dillingham in a worse condition than he would have been in had petitioners begun to object at once are, that during this one year and seven months Dillingham gave some attention to the land and land notes left on hand and held about $40,000.00 in his bank and continued monthly to pay himself out of this fund the sum of $150.00 and filed his reports quarterly with Master Winter, who gave no notice to these petitioners or their counsel, as his reports show, and who allowed these items quarter after quarter, filing his report thereon regularly in court, and which reports just as regularly stood confirmed after the lapse of one month under the rule of the court; that this went on for one year and seven months and until Mr. Dillingham had pocketed $2,850.00, and had secured it beyond our reach, because we failed to object within time under the rule; that Mr. Dillingham still has this money and the decree appealed from does not interfere with his right to keep it; that about the time he filed his report for the months of April, May and June, 1893, petitioners had gotten information of what Mr. Dillingham was doing; that they then learned that he was paying himself just as of old; that they then begun to object, and the contest has gone on since. During these contests of his various accounts before Master Winter as they were filed each quarter two years elapsed, Dillingham during this time continuing to pay himself this money over petitioners' objections. During this period he paid himself $3,600.00, and this is the money Master Lathrop reported ought to be refunded and which the Circuit

Court decreed should be. This statement shows that all the money ordered paid back was taken by Mr. Dillingham with full knowledge that we disputed his right to it and was taken over our objections, and during this period on November 7, 1893, all the lands and lots were sold under execution and Mr. Gibbs testified that Mr. Dillingham had had nothing to do with them since April, 1893. His chief business during this two years was to hold a large fund on deposit in his own bank.

And for all the services the receiver performed after the road was turned over he actually received the said sum of $2,850.00. The master found and the Circuit Court approved his finding that this $2,850.00 much more than paid Mr. Dillingham for all he has done since he delivered the road to these petitioners. Is there anything in these facts that tend to show that Mr. Dillingham is in a worse condition by our failure to object sooner? In all candor is he not actually $2,850.00 ahead and solely because we did not sooner object?

Authority is not necessary to show that no element of estoppel can be found in the above facts.

Petioners further show that the decision was rendered on June 23, 1897, and that the time, one year, allowed under the rules and decisions of this court in which to petition for a certiorari (The Conquerer, 166 U. S. 110) has not expired; that the mandate of said Circuit Court of Appeals has been issued, returned to and filed with the clerk of the Circuit Court.

It appearing that Judge Pardee was recused, and that the Circuit Court of Appeals have ignored the settled rule of

this court that a master's report of the facts will not be disturbed or modified unless it clearly appears to be erroneous and without evidence to support it, we feel warranted in petitioning this Honorable Court for a writ of certiorari.

Wherefore, petitioners pray that a writ of certiorari may issue to the said Honorable, the Circuit Court of Appeals for the Fifth Circuit, to bring up for review the judgment and decree of said court in the above numbered and entitled cause, and that an order do issue directing the Honorable Circuit Court of Appeals to recall its mandate, and hold the same subject to the orders of this court, and until the case may be disposed of in this Honorable Court; that upon a hearing of this cause that the judgment and decree of the Circuit Court of Appeals be quashed and reversed, and the decree of the Circuit Court sustaining the master's report be affirmed; and petitioners pray for such further and general relief in the premises as the case may require, and to this Honorable may seem meet and proper.

Respectfully submitted,

L. W. CAMPBELL,

Solicitor for Amedee D. Moran, Cornelius B. Gold and Henry K. McHarg, Petitioners.

STATE OF NEW YORK,
COUNTY AND CITY OF NEW YORK,

Personally appeared before me, the undersigned authority, Amedee D. Moran, Cornelius B. Gold and Henry K. McHarg, and each of whom being by me duly sworn deposes and says that they are the petitioners in the above applica-

tion for certiorari to the Supreme Court of the United States, and that they are acquainted with the contents of the foregoing petition, and that the facts, matters and things therein set forth are true to the best of their knowledge, information and belief.

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Sworn to and subscribed before me on this ..... day of February, 1898.

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Notary Public, New York County.

PAGE CUT OFF

IN THE

United States Supreme Court

OCTOBER TERM, 1897.

No. .....

AMEDEE D. MORAN ET AL., Petitioners,

versus

CHARLES DILLINGHAM, Respondent.

Brief for Petitioners in Support of Their Application for Certiorari.

We find that we have presented in our petition the question of Judge Pardee's disqualification in rather a hasty manner and have probably taken too much for granted, and may have failed to make ourselves clear on that point, hence the argument. The statute provides (italics ours): "That n

ustice or judge before whom a *cause* or *question* may have been tried in the district court or existing Circuit Court shall it at the trial or hearing of such *cause* or *question* in the Circuit Court of Appeals." If he tried the "cause" or if he ried the "question" below he is recused above. Mark, it oes not say entered the particular order, judgment or deree appealed from. The word "cause" as used in the statte doubtless means "case," as these terms are frequently nd generally used interchangeably. A "case" is defined to e "a state of facts which furnishes occasion for the exercise f the jurisdiction of a court of justice." "A question conested before a court of justice; an action or suit in law or quity." "An action, suit or cause." (Anderson, Law Dec., p. 52.)

"Question" is defined thus: "Subject of inquiry; a matter nder examination or discussion. May be of pure fact, of ure law, or both of fact and law; in the last case constitutng a mixed question." Same, p. 851.

Bearing in mind the above definitions, let us turn our attention to the causes and questions tried by Judge Pardee at ircuit in the cause and receivership out of which the apeal was taken.

1. Judge Pardee appointed Mr. Dillingham receiver. (R. 7.) And thereby was tried before him directly the right, ower and authority of Dillingham to retain possession of ll the property of the railway company until the further orer of the Court, and incidentally to receive such compensaon as may be allowed him by the court.

2. Judge Pardee entered the order of December 4, 1886, utting Mr. Dillingham on the pay rolls at $150.00 per onth "to date from the possession of the receivers and to

continue while Mr. Dillingham gives his personal attentio to the business of the company, or until the further order o the court." (R. p. 7.) And thereby was tried and detei mined by Judge Pardee, the "cause" and "question" (1) a to whether Mr. Dillingham was entitled to compensation (2) the value of his services; (3) when it should be gin; (4) when it should end and under what circumstan ces and by what authority, and (5) what services he was t perform to earn this allowance. Among other questions (a stated above) tried by Judge Pardee and determined by th above order was as to how long it should continue. Judg Pardee decided that it should continue while he "gives hi personal attention to the business of the company or unti the further order of the court." Turn now to the opinion o the Circuit Court of Appeals. The main feature of th opinion is the consideration of the contingencies named i the order. That is, whether Dillingham *was* giving "hi personal attention to the business of the company," whethe "the Court had otherwise ordered" that he should draw thi allowance, and whether Mr. Dillingham was entitled to th $150.00 per month so long as he continued to give his per sonal attention to the business of the company, or until i was otherwise ordered. The opinion starts out by quotin the order of December 4, 1886, as a sort of text, and afte quoting certain other and subsequent orders entered by Judge Pardee, we find this language: "Dillingham contin ued to act as receiver up to April, 1895, apparently from th record attending to such matters as were necessary," etc. Th opinion proceeds: "And yet after the receiver had proceede until 1895 with all the responsibilities, obligations and dutie upon him," etc. And on the other contingency, that is whether the order had been abrogated, the court finds as

fact that it had not. These are the questions of fact that Judge Pardee had to anticipate and consider prospectively to enter the order of December 4, 1886. The same questions of fact were considered by the Circuit Court of Appeals retrospectively, and after reviewing those facts and having concluded that Dillingham had during the period in question given "his personal attention to the business," ordered and adjudged that he was entitled to the allowance of $150 per month during the period in question and that our objections thereto should be overruled and discharged. The conclusion comes naturally that precisely the same "questions" were retried on appeal that were of necessity tried by Judge Pardee when he entered the order. To adjudge the allowance at Circuit in advance the same set of "questions" were not only of necessity required to be considered, but were in fact actually considered when this allowance was restored to Dillingham on appeal.

3. Judge Pardee entered the final decree of foreclosure. (R. p. 8.) It is by the second paragraph of the eighteenth article of this decree that these petitioners are adjudged to pay "the compensation of the receivers and their solicitors." (R. p. 19.) Thereby Judge Pardee at Circuit entered a decree against these petitioners and in favor of Mr. Dillingham for all such sums of money as might be due him as his fees and charges as receiver. And as necessarily incident thereto he tried and determined the question as to how and when this was to be paid and whether it could be adjusted between the parties by agreement, compromise or otherwise.

4. Special Master Winter, appointed by Judge Pardee, under a reference made to him by the terms of the final decree, heard the petitions and claims for allowance and reported to

the court that Dillingham's claim, among others, "had bee adjusted with the purchasing committee," meaning these p titioners. This report, by rule of the court, stood confirme after thirty days.

5. Judge Pardee entered the order of August 28, 189 which was entered a few days after the compromise and ac justment of the claims for compensation with these pet tioners and which ordered the receivers to deliver possessio of the property to these petitioners. And thereby was trie and incidentally determined the question whether the clain had been paid or adjusted, or if not how this would be don and in addition thereto the court held by this order jurisdic tion over the lots and land not sold for administration an until the further order of the court.

6. Judge Pardee entered the order of November 4, 189 which was a substantial re-enactment of the order of August 2 with a few slight modifications not important to this case.

7. In Judge Pardee's court was filed on December 1 1892, a report of Dillingham and Winter, master commi sioners, appointed by Judge Pardee to sell the propert showing that the $20,000.00 had been paid to Dillingha and they refer to it as the "agreement." And this repo stood confirmed under rule of the court. (R. p. 187 and 189

The foregoing shows that Judge Pardee practically di posed of the whole "cause," or "case," at Circuit, and th every order made by him either directly or incidentally af fected or "tried" the "question" of Dillingham's compens tion as receiver. These matters alone, would, it seems, recus Judge Pardee from sitting on appeal on any "cause" o "question" going to the appellate court, out of said cas

which involved the "question" of Dillingham's rights under the order of December 4th, 1886; or under the final decree of foreclosure, which made provision for his final compensation, or which affected the rights of these petitioners, who were adjudged to pay and settle Dillingham's final compensation, or which involved the rights and liabilities of either of the parties under the subsequent orders made by Judge Gardee.

The language of the act of 1891, creating the Circuit Court of Appeals, is taken from the Judiciary Act of 1789. The statute was made necessary by the peculiar features of the Federal Judiciary system so as to insure to all litigants the right of review of all "causes" and all "questions" by a different judge from the judge who tried the "cause" or question" in the court below. Without some such provision, the right of appeal from one mind to another would in measure be defeated. The language is apt and well chosen. Under its terms a judge may be recused though he had never made an order of any kind in the particular case appealed. This may be well illustrated in an imaginary case: A suit in ejectment is filed on the law side at Circuit to recover a tract of land. Defendant answers, claiming the land by a purely equitable title, and asserts that plaintiff's claim is a cloud on his title, and files a suit on the equity side to remove cloud and to enjoin the suit at law until his equity suit may be disposed of. Could the justice or judge who tried the equity case at circuit sit in the law case on appeal? Could the justice or judge who tried the law case at circuit sit in the equity case on appeal, granting that he has made no order of any description in the particular case appealed? We think not. Why? Because, while he made no order and did not try technically the case ap-

pealed, he did try at circuit the same "cause" and the same "question," that is, who was the owner of the land in dispute? And Judge Pardee having tried the question as to who was the owner of the $150.00 per month in dispute in this case while at circuit, he of necessity retried this "cause" and "question" on appeal. No other cause or question exists, or can exist, in this case than the one question as to who owns the money in controversy. A justice or judge who once tries that question between the parties below, is forever barred by the statute from trying it on appeal.

The foregoing argument is made without reaching the point raised in the case of American Construction Co. vs. Jacksonville, T. K. & W. Ry. Co., 148 U. S. 372. But the precise question raised and decided in that case is raised here. The decree appealed from in this case abrogated and set aside the order of December 4th, 1886, made by Judge Pardee at circuit. Judge Pardee, sitting in the case on appeal, revoked the decree of the Circuit Court, and reinstated his own former order, made at circuit. This is the same thing, substantially, that occurred in the case above mentioned. On this subject, this court say in that case:

"The more important suggestion is that the decree of the Circuit Court of Appeals is void, because Judge Pardee took part in the hearing and decision in that court, though disqualified from so doing by Section 3 of the Judiciary Act of 1891, which provides that 'No justice or judge before whom a cause or question may have been tried or heard,' in the Circuit Court, 'shall sit on the trial or hearing of such cause or question in the Circuit Court of Appeals.' 26 St. p. 827. The question whether this provision prohibited Judge Pardee from sitting in an appeal which was not from

is own order, but from an order setting aside his order, is novel and important one, deeply affecting the administration of justice in the Circuit Court of Appeals. If the statute made him incompetent to sit at the hearing, the decree in which he took part was unlawful, and perhaps absolutely void, and should certainly be set aside or quashed by any court having authority to review it by appeal, error or certiorari. U. S. vs. Lancaster, 5 Wheat 434; U. S. vs. Emolt, 105 U. S. 414; Queen vs. Justice of Hertfordshire, 6 Q. B. 753; Oakley vs. Aspinwall, 3 N. Y. 547; Tolland vs. Commissioners, 13 Gray 12."

And upon the ground that Judge Pardee was recused in that case, this court granted the writ of certiorari. Our application presents much stronger grounds than existed in that case. This sufficiently appears from what is said above. In the above case it seems that Judge Pardee had entered but one order in the Circuit Court, whereas in this case he entered practically every order made in the case, from start to finish. We call attention to what we say on this subject in our application, pages 1 to 12, and particularly to our letter to Judge Pardee, page 5, and our motion to set aside submission, page 6, and his reply, page 8. Judge Pardee's letter shows his views to be that as he did not enter the particular order appealed from, he was not recused. He says: "As a matter of strict law, both Judge McCormick and I are qualified, * * for neither of us participated in the rendition of the decree appealed from." Judge Pardee's conclusion might be right if his understanding of the law is right. But we do not understand the statute to say anything about the decision appealed from. If Judge Pardee is right, he could have tried our exceptions on the merits in the Circuit Court and granted a new trial, and when they

were tried a second time by some other judge and an ap
taken, Judge Pardee could sit in the case on appeal.
such a case he had not "participated in the decree appea
from." But he had tried the "cause" or "question" in
court below, and would, we think, be recused under
statute and decisions of this court.

In the American Construction Co. case Judge Pardee h
not participated in the rendition of the decree appea
from.

We call attention to the argument of the merits of
case on pages 12 to 66 in our petition. We there try
show, and hope we have shown, that the Circuit Court
Appeals in setting aside the decree of the Circuit Co
based as it is upon the report of a master which is suppor
by a preponderance of the evidence, is destructive of s
modes of trial and in defiance and destructive of the law
announced by this court in numerous decisions, and by
courts where equity practice is known. That argumen
made not only as a basis for the writ, but to show that
application is supported by merit, and is not made mer
to demonstrate that Judge Pardee is recused.

We call attention to the decision of the Circuit Court
Appeals (R. p. ——). It is clearly a final disposition of
objections, and not merely a reversal.

Respectfully submitted,

L. W. CAMPBELL,

Solicitor for Petitioners, Amedee D. Moran et al

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 243.

AMEDEE D. MORAN ET AL., PURCHASING TRUSTEES, PETITIONERS,

versus

CHARLES DILLINGHAM, RESPONDENT.

BRIEF FOR PETITIONERS.

On April 4, 1885, on the application of Morgan's Louisiana and Texas Railroad and Steamship Company, the complainant in equity cause No. 21, of said company against The Texas Central Railway Company, in the United States circuit court for the northern district of Texas, at Waco, the Hon. Don A. Pardee, circuit judge, appointed Benj. G. Clarke and Charles Dillingham receivers of the railway properties belonging to said Texas Central Railway Company (order appointing receivers, R., p. 3). Said receivers, having qualified, entered upon the performance of their duties, and on or about December 4, 1886, respondent Dillingham petitioned said court to make him an allowance

for his services, to be paid out of the current revenues coming into the hands of the receivers; which petition having been presented to Hon. Don A. Pardee, the following order was entered:

"On considering the foregoing petition, it is ordered by the court that the receivers be authorized and directed to place Charles Dillingham on the pay-rolls of the receivers for the sum of one hundred and fifty dollars per month as an allowance upon his compensation as receiver in this cause. This allowance to date from the possession of the receivers and to continue while Mr. Dillingham gives his personal attention to the business of the company, or until the further order of the court" (R., p. 6).

The cause remaining on the docket of said court, and having been subsequently consolidated with another cause, known as the Farmers' Loan and Trust Company *vs.* Texas Central Railway Company, No. 33, a final decree of foreclosure was entered in said consolidated cause on April 12, 1887, before the Hon. Don A. Pardee, circuit judge. (See final decree, R., pp. 7 to 17.)

The property, having been offered for sale under the terms of said final decree, was purchased by petitioners, as purchasing trustees, representing the first-mortgage bondholders, and afterwards they made application to said circuit court for possession of the property purchased by them; which petition having been presented to the Hon. Don A. Pardee, an order was entered thereon on August 28, 1891, by said circuit judge. (See petition and order, R., pp. 18 to 22.)

A further petition was presented to said court by these petitioners to modify the decree dated August 28, 1891, which having been presented to the Hon. Don A. Pardee, an order was entered thereon on November 4, 1891, by said judge (R., pp. 24 to 27).

The property so purchased by these petitioners having been delivered to them under the terms of the final decree, the said Dillingham, not having been formally discharged

from his trust, thereafter filed his reports from time to time before the then master, Jno. G. Winter, and these petitioners, as purchasing trustees, appeared before said master from and after April, 1893, and objected to the items of $150 per month, charged by the respondent as his compensation, after the sale and delivery of the property. These exceptions were urged from time to time after said date as the reports came in, until said master, Winter, filed his reports on the receiver's accounts, allowing to said respondent the sum of one hundred and fifty dollars per month, after such sale and delivery, so claimed by him under said order, as shown by said special master's reports (R., pp. 123 to 138). The reports having been filed with the clerk of the court, on to wit, April 8, 1895, these petitioners followed up the contest and filed exceptions thereto in court (R., pp. 27 to 31); which exceptions and the reports of Master Winter were on the same day re-referred to Abner S. Lathrop, Esq., the standing master (R., p. 28). These petitioners filed amended exceptions to the receiver's account before Master Lathrop (R., pp. 29 to 31). After said re-reference, Master Lathrop heard the parties and filed his report on September 26, 1896 (R., pp. 146 to 148), and among other things he finds (R., p. 147):

"I consider from the testimony that the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000, was intended as revoking the order of December 4th, 1886, allowing him $150 per month, and was intended as full compensation for the services up to the time the receivership terminated. Since turning over the rolls, etc., to the purchasing trustees, the duties and labor of the receiver, as appears from the evidence, have not been arduous, and such services were contemplated when the fee of $20,000 was paid in. All the other parties to whom allowances were made so considered it, and they have made no further charge, except Special Master Winter, who was by special agreement allowed a further small compensation."

Master Lathrop recommends by the report that the objections to the receiver's reports, wherein he has retained

the $150 per month from April, 1893, up to April 8, 1895, be sustained, and that the said Dillingham be ordered to pay into the registry of the court the following amounts:

For 1893, nine months	$1,350 00
For 1894, twelve months	1,800 00
For 1895, three months	450 00
Total	$3,600 00

Upon the coming in of the report Dillingham filed exceptions thereto (R., pp. 148 to 150). The said exceptions and the master's report coming on to be heard before Hon. Charles Swayne, one of the district judges, presiding, said report was in all things confirmed, and respondent was ordered to at once pay into the registry of the court the said sum of $3,600 (R., p. 150); from which decree Dillingham appealed to the circuit court of appeals of the fifth circuit, and the cause was submitted on oral arguments and printed briefs for both parties, and was heard by the Hon. Don A. Pardee, presiding judge, and Hon. William T. Newman, district judge. (See opinion, R., p. 163.) After the cause had been submitted, and after petitioners' counsel returned from New Orleans to his home in Waco, Texas, he prepared a motion to set aside the submission of the cause on the ground that Judge Pardee was recused, and sent said motion to the clerk, and at the same time wrote Judge Pardee a letter in reference to the motion, which letter, motion, and Judge Pardee's reply thereto are as follows:

CHAS. DILLINGHAM
vs.
AMEDEE D. MORAN ET AL. } No. 556.

WACO, TEXAS, 5, 5, '97.

Hon. DON A. PARDEE, *New Orleans, La.*

DEAR SIR: When the above-entitled cause was taken on submission the other day by you and Judge Newman, I had

not investigated the question of your disqualification, but since arriving home I have to some extent investigated the question in reference to the record, and I believe you are disqualified under the statute. I would not like to have that question involved in the case, as it would cause considerable delay and expense, and as the other cause, which is really a companion case to this one, which involves the right to the surplus fund in court, is set down for the 2d of June, I would prefer that you would set aside the submission in this case, and let it be submitted at the time the other cases come up in which you and Judge McCormick are recused.

I would have made the suggestion at the time the case was submitted, but I had never investigated a question of this kind. I feel that it is my duty to advise you of my views on this subject before the case is decided. I have prepared a motion to set aside the submission, and sent the same to the clerk. I may be in error in regard to this, and have been at a loss to know how to reach the point, but have concluded that it is my duty, as stated above, to advise you of my views before a decision is reached.

Yours truly, L. W. CAMPBELL.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

CHARLES DILLINGHAM, *Receiver, Appellant,*
versus
AMEDEE D. MORAN ET AL., *as Purchasing Trustees, etc., Appellees.* } No. 556.

Appeal from the United States Circuit Court, Northern District of Texas.

Now at this time come Amedee D. Moran, Cornelius B. Gold, and Henry K. McHarg, purchasing trustees, and move this honorable court to set aside the submission heretofore entered in the above-entitled cause, and to set the

same down for submission at a future day of this term for the following reasons, to wit:

Because this case was taken on submission by Hon. Don A. Pardee, presiding judge of this court, and Hon. William T. Newman, one of the district judges of this circuit, sitting with the presiding judge, constituting the court at which said submission was received, and appellees, after argument and submission, upon a re-examination of the record in the above-entitled cause and the judiciary act and the decisions construing the same, are advised that the Hon. Don A. Pardee is recused and disqualified from sitting in this cause on the following grounds, to wit: (1) While sitting at circuit, as is shown by the record in this cause, he entered the order appointing the receiver, Charles Dillingham; (2) fixed the compensation and allowance as receiver by the order of December 4, 1886; (3) entered the final decree in this cause; (4) entered the order of confirmation; (5) entered the order of August 28, 1891, in this cause, and (6) entered the order of November 4, 1891, in this cause; that said orders were entered upon petitions, as shown by the record in this cause, and which of necessity required the judge, in passing upon the petitions and entering the orders, to decide the question of compensation of the receiver, Dillingham, and as to how long it should continue and for what services it would cover, which was the same question (and in the same case) decided in the lower court, and which is brought to this court for review, as is shown by the record in this cause; that counsel representing appellees neither at the time of argument nor prior thereto had investigated the authorities with a view of determining this question, and was therefore not advised in the premises, and for this reason did not make the suggestion as to disqualification at the time.

Respectfully submitted.

L. W. CAMPBELL,
Solicitor for Moran, Gold, and Henry K. McHarg, Appellees.

UNITED STATES CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT, AT CHAMBERS—DON A. PARDEE, JUDGE.

NEW ORLEANS, LA., *May* 7, 1897.

L. W. CAMPBELL, Esq.,

General Attorney Texas Central Railroad, Waco, Texas.

DEAR SIR: I have your letter of the 5th instant and note the contents. As a matter of strict law, both Judge McCormick and I are qualified to sit in the case of Dillingham *vs.* Moran, for neither of us participated in the rendition of the decree appealed from. Whether Judge McCormick is disqualified in the case of Morgan's Louisiana & Texas Railroad *vs.* Moran, continued over for a full bench, I cannot say; but I am reasonably clear that strictly I am not recusable in that case.

For some time and because it would not delay business, both Judge McCormick and I have been in the habit of declining to sit in any cases of appeal wherein we have made former orders. When it comes, however, to embarrassing the business of the court by declining to participate, my impression is that we shall modify the habit.

Very respectfully yours, DON A. PARDEE.

At the same time said letter was sent to Judge Pardee, the motion to set aside the submission was mailed to the clerk by letter as follows:

WACO, TEXAS, 5, 5, '97.

J. M. MCKEE, Esq., *New Orleans, La.*

DEAR SIR: I enclose you herewith motion in case No. 556, Dillingham *vs.* Moran, which was submitted before Judges Pardee and Newman. This motion is to set aside the submission on the ground that Judge Pardee is recused. I have written Judge Pardee on the subject of this motion. I wish you would file same and call Judge Pardee's attention to it. I do not wish to argue the motion. I will send Judge

Clark's acceptance of service of the motion by succeeding mail, so it will not be necessary for you to have him served. If such motions as these are required under the rules to be printed, I wish you would have it done for me and send me the bill.

Yours truly, L. W. CAMPBELL.

(See petition for certiorari, pp. 4 to 9.)

Judge Pardee in his letter having stated that he was not recused, no further action was taken on the part of these petitioners, and afterwards, on, to wit, the 23d day of June, 1897, the opinion was delivered in said cause, reversing the decree appealed from, directing that the exceptions of these petitioners to the accounts of said Dillingham should be overruled. The case is here on certiorari.

The writ was prayed for, first, upon the ground that Judge Pardee was recused, and, second, upon the ground that the decree of the circuit court of appeals reversing the decree of the lower court is erroneous in that the decree appealed from should have been affirmed, and that that court in reversing the circuit court practically nullified the well-established rule of this court that a master's report of the facts will not be disturbed unless it clearly appears to be erroneous and without evidence to support it, and we urge the same grounds of error, namely:

(1.) That Judge Pardee was recused under the statute, and the decree of the circuit court of appeals is void.

(2.) That the decision of that court is clearly wrong on the merits, in that the judgment of the circuit court is clearly supported by a great preponderance of the evidence, and the circuit court of appeals has ignored and set aside the established rule of this court that a master's report of the facts will not be set aside unless clearly wrong and without evidence to support it.

I.

In support of our first ground that Judge Pardee was recused and disqualified from sitting in this case on appeal, we cite the court to section 3 of the act to establish the circuit court of appeals approved March 3, 1891, and which reads as follows:

"That no justice or judge before whom a cause or question may have been tried in the district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals." (See American Construction Co. *vs.* Jacksonville, T., K. & W. R'y Co., 13 Sup. Rep., at page 764 (S. C., 148, U. S. Sup. Rep., p. 372); U. S. *vs.* Lancaster, 5 Wheat., 434; U. S. *vs.* Emholt, 105 U. S., 414.)

The opinion and record in the case at bar show that the contention in the circuit court was as to whether the order of December 4, 1886, whereby Judge Pardee placed the receiver Dillingham on the pay-rolls at $150 per month, was still in force or had been abrogated and set aside by the compromise whereby Dillingham was paid $20,000, as reported by Master Lathrop, or if not abrogated was the receiver entitled to said $150 per month under the terms of the original order made by Judge Pardee, *after he had ceased to attend to the business of the railway company?* Not only were these the main questions at circuit, but in the appeal court the subsequent orders of the court quoted in the opinion, all made by Judge Pardee, are passed on, and it is held thereunder that the receiver was entitled to continue to draw the $150 per month until he was finally discharged by the court. Indeed, Judge Pardee rendered every order in the record, including the final decree, except the particular order appealed from. Reading these orders and the opinion of the court, enforces the conclusion that the same "cause or question" in reference to Dillingham's compensation and

as to how long it might continue and under what circumstances was tried before Judge Pardee at circuit and was retried before him on appeal. No amount of argument or elaboration could make this proposition plainer than will appear from a review of the record and the opinion. (See the various orders made by Judge Pardee at circuit, R., pp. 3, 5, 7, 18, and 23.)

For further discussion of this question we refer to our brief filed in this cause in support of our petition for certiorari.

II.

The application was based upon the further ground, as stated above, that the circuit court of appeals erred in deciding the case, has invaded the province of the trial court and master in deciding questions of fact, has set aside the report of the master and the decree of the circuit court approving same on questions of fact only, and has ignored and set aside the well-established rule of this court that "the master's conclusions have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part," and we now urge this ground for reversing the decree of the circuit court of appeals and affirming that of the circuit court. The court of appeals reached the conclusion that the report of Master Lathrop and the decree of the court confirming it are erroneous, set aside both, and remanded the case to the lower court with directions to overrule and discharge the motions attacking the receiver's accounts.

It appearing that upon a re-reference of the receiver's accounts, and our exceptions thereto, to Master Lathrop he found the facts in favor of these petitioners, it remains to be determined whether, under the well-recognized rules of this court, the circuit court of appeals were justified in substituting its judgment and estimation of the testimony for

that of Master Lathrop, and of the circuit court confirming his report.

The rule referred to, showing the weight given a master's findings of fact, is clearly stated in the case of Camden *vs.* Stuart, 144 U. S., 104, in this language:

"His conclusions have every reasonable presumption in their favor, and are not to be set aside or modified unless there appears to have been error or mistake on his part."

Judge Pardee, in passing upon a master's report in the case of Missouri Pacific Railway Co. *vs.* Texas & Pacific Railway Co., 33 Fed. Rep., at page 806, says:

"The law of the case, as reported by the master, is not questioned. The evidence is so conflicting that in order to reach a finding of the real facts some testimony must be rejected as untruthful. In such a case, *unless plain error is established, the finding of a master should be as conclusive as a verdict of a jury.*"

In 14 Am. & Eng. Ency. of Law, at page 940, it is said:

"As a rule, however, it may be stated that *the findings of fact by the master are conclusive unless clear mistake or fraud is shown.*"

The author cites in support of his statement of the law numerous decisions, some from this court, and many from State courts of last resort. This proposition is so elementary and appears to be so well settled in this court a further citation of authorities would, we think, be altogether unnecessary, but we quote below what the courts are holding on this question from a few cases, and we find none to the contrary:

"Findings of fact by a master in chancery, to whom, by consent of parties, a case is referred to find the facts, are conclusive in the absence of anything to show that they are unsupported by the evidence" (Davis *vs.* Schwartz, 15 S. Ct., 237; 155 U. S., 631).

"Conclusions of fact of a master and trial court, on con-

flicting evidence in an equity case will not be disturbed on appeal, unless some obvious error is pointed out" (Warren *vs.* Keep, 15 S. Ct., 83; 155 U. S., 265).

"The findings of a master on matters of facts are *prima facie* correct, and should not be overruled in an appellate court unless without evidence to sustain them" (Gay Mfg. Co. *vs.* Camp, 65 Fed. Rep., 794).

"A referee's finding, like that of a jury, will not be disturbed if fairly warranted by the evidence" (McClure *vs.* Times Pub. Co. (Pa. Sup.), 32 A., 293).

"A referee's findings of fact are not reviewable on appeal" (McEwen *vs.* Louchiem (N. C.), 20 S. E., 519).

"A finding of a referee will not be disturbed, though the court might have reached a different conclusion, where it cannot be said with reasonable certainty that the finding was erroneous" (D. G. Burton Co. *vs.* Cowan (Sup.), 30 N. Y. Sup., 317).

"The findings of a referee on conflicting evidence will not be disturbed on appeal" (Douglas *vs.* Halstead, 30 N. Y. S., 592).

"The findings of a trial court will not be disturbed unless they are contrary to the clear preponderance of the evidence" (Senour Mfg. Co. *vs.* Clarke (Wis.), 71 N. W., 883).

"Where a decree is based on conflicting evidence, the finding of a chancellor will not be disturbed" (Chrislip *vs.* Teter (W. Va.), 71 N. W., 98).

"Where the appellate court cannot say that the findings of the trial court are clearly against the preponderance of the evidence, the judgment will be affirmed" (Clausen *vs.* Hale (Wis.), 71 N. W., 122).

"Where a report of a referee was confirmed by the court, the judgment will not be reversed on questions of fact, unless clearly against the weight of the evidence" (McCallan *vs.* Buckstaff (Wis.), 71 N. W., 604).

"A finding of fact on conflicting evidence will not be disturbed on appeal" (Requa *vs.* Irwin (Sup.), 44 N. Y. S., 771).

"A finding of fact by a trial court will not be set aside unless against the clear preponderance of the evidence" (Henderson *vs.* Adams (Utah), 48, p. 398).

"Conclusions of the referee on questions of fact, confirmed by the court, are in the nature of special findings, and, if supported by the evidence, will not be reviewed" (Demsey *vs.* Schawacker (Mo. Sup.), 38 S. W., 954).

"The findings of an auditor or master, confirmed by the lower court, are to be taken as presumably correct, and will be reversed only in case of obvious error" (Richardson *vs.* Van Auen, 5 App. D. C., 209).

"The supreme court cannot review conflicting evidence" (Koons *vs.* Beach (Ind. Sup.), 45 N. E., 601).

"A finding by a circuit court on conflicting evidence as to the proper compensation of a trustee, not being flagrantly against testimony, will not be disturbed" (Chenault *vs.* Madison County Court (Ky.), 38 S. W., 432).

"A master's finding of fact, on evidence sufficient to go to a jury, will not be disturbed on appeal" (White *vs.* Wright (Pa. Sup.), 36 A., 154).

"Findings of a court of equity, or by a referee, on conflicting evidence will not be disturbed, unless manifestly against the weight of evidence" (Swyer *vs.* Salt Lake City Copper Mfg. Co. (Utah), 48, p. 311).

"A referee's findings of fact will not be disturbed unless against the clear preponderance of the evidence" (Hinz *vs.* Van Dusen (Wis.), 70 N. W., 657).

"Findings of a referee, especially when approved by the court below, having evidence to sustain them, will not be disturbed" (Philadelphia Co. *vs.* United Gas Imp. Co. (Pa.), Sup. 36 A., 742).

"Where the master and the chancellor agreed with respect to disputed items in an account, and there is legal evidence to sustain them, they will not be reviewed" (Still *vs.* Burkett (Tenn.), Ch. Ap., 39 S. W., 347).

"A finding by a master on conflicting evidence, approved by the court, will not be disturbed unless clearly wrong" (Hall Co. *vs.* Dresser (Mass.), 46 N. E., 420).

"The finding of a master that the rail of a railway track was so worn as to render its use negligence, made on conflicting testimony, and an examination of the rail by him in person, with counsel, will not be reviewed" (Clyde *vs.* Richmond D. R. Co. (C. C.), 59 Fed. Rep., 394).

"Findings of fact by a referee on conflicting evidence, confirmed by the court, will not be disturbed on appeal" (Hannaman *vs.* Karrick, 33 P., 1039).

"A referee's finding on conflicting evidence, involving the credibility of witnesses, stands on the same footing as a verdict" (Briggs *vs.* Hiles (Wis.), 58 N. W., 752).

"Findings of a referee will not be disturbed on appeal un-

less against the manifest preponderance of evidence" (Schute *vs.* Jones, 28 N. Y. S., 1072).

"A decree of a chancellor on conflicting evidence will not be set aside where there was any evidence to sustain it" (Vaughan *vs.* Commercial National Bank (Miss.), 18 So., 270).

"Findings of fact in equity will not be reversed unless they are against the weight of evidence" (So. Com. & Savings Bank *vs.* Koeln, 60 Mo. App., 79).

"Where there is legitimate evidence fairly tending to establish a fact, the findings thereon by a special master will not be disturbed unless fraud or corruption is shown" (Walston *vs.* Smith, 32 A., 486).

Bearing in mind the above rule, we turn to the findings of fact reported by Master Lathrop and upon which the decree of the circuit court is based, and to the testimony, so that this court may determine whether there is evidence to support such findings.

The substantial foundation for the decree of the circuit court that Dillingham should return the money taken between April, 1893, and April, 1895, a period of two years, at $1,800 per year, or a total of $3,600, is the master's finding of fact as follows:

"I consider from the testimony, (1) that the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000, was intended as revoking the order of December 4, 1886, allowing him $150 per month, and was intended as full compensation for the services up to the time the receivership terminated; (2) since turning over the rolls, etc., to the purchasing trustees the duties and labors of the receiver, as appears from the evidence, have not been arduous; (3) and such services were contemplated when the fee of $20,000 was paid in. All the other parties to whom allowances were made so considered it, as they made no further charge, except Special Master Winter, who was by special agreement allowed a further small compensation. I do not consider that I have a right to go behind the receiver's reports, which were reported on by the master and not objected to, as above stated. Therefore, the said receiver, by receiving $150 per

month, from September, 1891, to April, 1893, has been much more than compensated for any labor he has performed as such receiver from September, 1891, up to the present time" (R., p. 146).

The first of the above findings by the master is: "That the compromise made in September, 1891, allowing C. Dillingham, receiver, $20,000, was intended as revoking the order of December 4th, 1886, allowing him $150, and was intended as full compensation for the services up to the time the receivership terminated." This finding is clearly supported by the testimony. Indeed, there is practically no evidence to the contrary, as will appear from the following summary of the evidence heard on this point by Master Lathrop:

The final decree of foreclosure provides:

"Second. Upon confirmation of the sale and delivery of title, the purchaser shall pay in cash such sums as may be ascertained, on due reference to and report by the master, sufficient to pay off and satisfy all the indebtedness of the receivers, incurred by them in this cause, including all the expenses and costs of the receivers' administration of the property, all claims and demands adjudged against them growing out of their operation of the property, all receivers' certificates heretofore ordered to be issued and remaining unpaid, all indebtedness for pay-rolls, materials and supplies due by said receivers, *and also the compensation of the receivers, and their solicitors*" (R., p. 15).

Soon after the sale and confirmation and pursuant to the above-quoted provisions of the decree of foreclosure, on June 8, 1891, the receiver Dillingham and his attorneys and other parties having claims filed their petitions for allowances with Master Winter. Some of these petitions are in the record (R., pp. 88 to 90). We quote Mr. Dillingham's petition (italics ours):

"*Petition of Receiver Dillingham for Compensation.*

"UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF TEXAS.

"MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY, *Complainant,*
versus
"TEXAS CENTRAL RAILWAY COMPANY, *Defendant.*
} No. 21. Equity.

"Now before John G. Winter, special master in the above-entitled cause, comes Charles Dillingham, receiver in the above-entitled cause, and prays that said special master will *make to him such an allowance for his services as receiver in the above-entitled cause, from the date of his appointment until his discharge,* as to said master may seem just and proper, and appearer prays for all further and equitable relief.

"FARRAR & KRUTTSCHNITT,
"*Solicitors for Chas. Dillingham.*"

R., p. 6.

Please bear in mind that the petition is for compensation "until his discharge"—in other words, for final compensation.

The claims presented by the petitions for allowances created a spirited controversy, which required the taking of considerable testimony and several hearings before the master, the time covering a period of several months before the controversy thus engendered was finally compromised. In the meantime a large amount of correspondence took place between the local attorney of the trustee and the attorneys representing the purchasing trustees in New York, and a few telegrams passed between Master Winter and the New York counsel. At the several hearings before Master Winter, stenographic reports of the testimony were taken and filed with his report upon said petitions. These peti-

tions and the correspondence between the attorneys in Texas and those in New York in reference to these claims were introduced in evidence before Master Lathrop. In addition, we introduced in evidence the testimony of Henry K. McHarg, one of the purchasing trustees, and the receipt of Charles Dillingham, besides taking the oral testimony of a number of other witnesses, including Charles Dillingham, all of which appears in the record.

The report of Master Winter upon said petitions for allowances shows that it is made under the provisions of the final decree quoted above. The master states: "At the hearing, claims for compensation and allowance were presented as follows." Then he sets out the claims of several parties, including the claim of Charles Dillingham, receiver, and on page 160 he says:

"After several adjournments the report again came up for consideration in my office, in Houston, Texas, on the 24th day of August, 1891, when appeared the aforementioned counsel, Messrs. Baker, Kruttschnitt and Ballinger, *whereupon counsel named stated in open court that the claims for compensation by the receivers, Clark and Dillingham*, and the Farmers' Loan & Trust Company, trustee, by Messrs. Baker, Botts & Baker, Farrar & Kruttschnitt, Turner, McClure & Rolston, Ballinger, Mott & Terry, Ballinger, Mott & Ballinger and Willie, Mott & Ballinger *had been adjusted with the purchasing committee hereinbefore mentioned.* I therefore make no report upon these items."

The foregoing finding shows that the claims for allowances as set out in the petitions filed with the master, including Dillingham's, had been compromised with these petitioners. We introduced in evidence before Special Master Lathrop Dillingham's receipt for $20,000, which reads as follows:

"CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF TEXAS.

"MORGAN'S LOUISIANA & TEXAS RAILROAD AND STEAMSHIP COMPANY
vs.
"TEXAS CENTRAL RAILWAY COMPANY ET AL. } Original Bill.

"THE FARMERS' LOAN AND TRUST COMPANY
vs.
"TEXAS CENTRAL RAILWAY COMPANY ET AL. } Cross bill.

"Received of Messrs. Moran, Gold, and McHarg, purchasing committee, the sum of twenty thousand dollars ($20,000.00) *in full of my fees and charges as receiver of the Texas Central Railway Company*, as per agreement.

"Dated Houston, Texas, Sept. 14th, 1891.

"(Duplicate.) CHARLES DILLINGHAM, *Receiver.*"

R., p. 81.

This receipt was offered in connection with the deposition of one of the petitioners, Henry K. McHarg, who testified, among other things, as follows:

"Second interrogatory. This is a proceeding on behalf of the purchasing committee, who object to certain items of $150.00 each, charged in the accounts of Charles Dillingham, as receiver, covering a period from September, 1891, to April, 1895, aggregating between six and seven thousand dollars. The committee claiming that they paid Mr. Dillingham $20,000.00, on or about September 14th, 1891, in full of his services as receiver until his discharge. Now, you will please state if you remember the circumstances under which said $20,000.00 was paid, and how it was paid, and your understanding as to what such payment covered."

"Answer. I recollect the fact of our company having paid $20,000.00 in full for Mr. Dillingham's services, and supposed at the time that it covered them entirely."

"Third interrogatory. You will please state if you had any attorney, or attorneys, looking after the claim of said Dillingham and others. If so, please state who acted as

your attorney, or the attorney for the committee, and state who had control of such matters, you or your attorney, and who, if any one, negotiated said settlement. State all these matters as fully as you can."

"A. Messrs. Turner, McClure & Roiston were attorneys for the trust company and for the committee. They had full control of all matters connected with the litigation, and negotiated the settlement."

"Fourth interrogatory. State whether or not you had ever at any time, either prior or subsequent to the payment of said $20,000.00, had any agreement or understanding with Mr. Dillingham as to his right to receive any additional compensation over and above said $20,000.00. Please state fully."

"A. The committee or myself never had any agreement or understanding with Mr. Dillingham as to his right to receive any sum in compensation for his services in excess of the $20,000.00."

"Fifth interrogatory. State whether or not you or the committee ever authorized or empowered any person to agree to give Mr. Dillingham any additional compensation for his services. Please state fully."

"Answer. Neither the committee nor myself ever authorized or empowered any person to agree to give Mr. Dillingham any additional compensation for his services."

"Sixth interrogatory. Please state the names of the persons who constituted the purchasing committee to purchase the Texas Central Railway Company. State whether or not such persons are bondholders secured by the first mortgage on the Texas Central Railway Company, which mortgage was foreclosed.

"Answer. The purchasing committee to purchase the Texas Central Railway Company consisted of Messrs. Charles Moran, Cornelius B. Gould, and myself. They either represented large holders of the first-mortgage bonds or were themselves *bona fide* holders.

"Seventh interrogatory. Please state what your understanding was, and from whom you derived your information, as to what the $20,000 was paid Mr. Dillingham for—that is, what services was he to perform. Please state this fully.

"Answer. My understanding was that the $20,000, which seemed to me an extravagant amount at the time, was paid

Mr. Dillingham in full for his services. Could not state from whom I derived my information; presume it came from our attorneys" (R., pp. 38 to 71).

We also introduced in evidence the testimony of the former master, Jno. G. Winter, who, among other things, testified as follows:

"Question. Do you remember whether you made a report on these claims or not?

"Answer. The report in this case will show.

"Question. Look and see if that is your report. You made that report, did you not?

"Answer. Yes, sir. Report in master's No. 321, filed August 25, 1891, was made by me and signed by me, and I recollect the circumstances.

"Question. Is that report on the compensation of the receivers and the attorneys?

"Answer. Yes, sir; the report speaks for itself. It appears to be as you say. It speaks for itself, however.

"Question. 'After several adjournments the report again came up for consideration in my office, at Houston, Texas, on the 24th day of August, 1891, when appeared the aforementioned counsel, Messrs. Botts, Kruttschnitt and Ballinger; whereupon the counsel named stated in open court that the claims for compensation by the receivers, Clarke and Dillingham, and by the Farmers' Loan and Trust Company, trustee, by Messrs. Baker, Botts & Baker; Farrar & Kruttschnitt, Turner, McClure & Rolston, Ballinger, Mott & Terry, Mott, Terry & Ballinger, Willie, Mott & Ballinger, and Mott and Ballinger, had been adjusted with the purchasing committee hereinbefore mentioned. I therefore make no report upon these items.' Now I wish you to explain what was stated before you by counsel—what claims had been adjusted.

"Answer. I could not state what transpired there more fully than what you have just read. There was quite a gathering in my office at the time. This is all that was stated. When the reference was called that statement was made by some one of the gentlemen, but I do not know who.

"Question. Do you know if the claims set forth in the petitions upon which that report is made, the petitions filed

by the parties respectively in master's No. 321, are the ones you have examined?

"Answer. I suppose so. The report will show" (R., pp. 64 to 67).

Mr. DILLINGHAM testified in his own behalf before Master Lathrop as follows:

"Q. You received in September, 1891, from these same people that are objecting here $20,000.00, didn't you, as compensation as receiver?

"A. I received from the Farmers' Loan and Trust Company, I think.

"Q. No, it is the purchasing trustees.

"A. The question of compensation came up, and the compensation of the receivers and the lawyers and master came up, and it was referred to a special master, and before the hearing the Farmers' Loan and Trust Company, I suppose it was—it was through their attorneys—came in and made a proposition to us all to pay us a lump sum, which was accepted and mine was $20,000.00" (R., p. 40).

On further examination respondent testified:

"Q. I will ask you to explain fully the matters and circumstances and details under which this sum of $20,000.00 was paid you by the Farmers' Loan and Trust Company for these parties here.

"A. The litigation was about to be closed and the mortgaged property had been sold, and the question of compensation to the receiver and the attorneys in the case come up, and the court ordered it referred to the master for report. The master had ordered a hearing or called for a hearing, but at that hearing the attorneys got together and it was suggested that it might be fixed out of court, and there was negotiations between Baker, Botts & Baker on the one side, and——

"Q. Baker, Botts & Baker represented whom?

"A. Themselves and me. And Mott & Ballinger, Ballinger, Mott & Terry, Mott & Terry, Mott's firm who had been engaged in the litigation, and Farrar, Jones & Kruttschnitt, and finally they arrived at a—the Farmers' Loan and Trust Company, to pay us all a lump sum.

"Q. Each?

"A. Each, and that proposition was accepted and they paid it.

"Q. What was that $20,000.00 intended as compensation for by the parties who paid it, and by you who accepted it?

"A. It was intended as compensation as receiver up to that time.

"Q. Up to that time?

"A. Yes, sir.

"Q. Was anything said at that time as to further pay for the receiver?

"A. No, sir.

"Q. What time was this $20,000.00 paid in 1891?

"A. I cannot tell. I understand Mr. Campbell has a report there that shows it.

"(By Mr. CAMPBELL:) It shows September 24th, 1891.

"A. Yes, sir" (R., p. 43).

He also testified further:

"Q. Was there any understanding or agreement or stipulation when the $20,000.00 was paid as to how it was to be treated; if it was to be in full for all services rendered and to be rendered in the future?

"A. No stipulation that it was for services to be rendered.

"Q. It did not cover services to be rendered?

"A. No, sir.

"Q. Is it not a fact that the understanding was to the contrary; that you were to be compensated for matters with reference to the receivership thereafter, and that you were to continue to draw the $150.00 per month until the receivership was closed finally?

"A. I do not know that the question was discussed. I think at that time it was supposed the thing would be closed up at once" (R., pp. 43 to 46).

The correspondence between Col. M. F. Mott, local counsel of the Farmers' Loan and Trust Company, and Messrs. Turner, McClure & Rolston, New York counsel, was attached to the depositions of Mr. McHarg, and among other things appear the following facts:

Special Master Winter having had the matter of compensation of the various parties under consideration, on July

22, 1891, had concluded a draft of his report and wired to Messrs. Turner, McClure & Rolston, as follows:

"JULY 22ND, 1891.

"Dated Iredell, Texas.

"To Turner, McClure & Rolston, 22 Williams street, New York:

"Draft report too late to send your copy. Draft comes up for consideration Houston, Texas, Saturday; Mott notified; wire me Houston if desired. Your claim allows Mott fifteen, Metropolitan two, Botts Farrar twenty-five hundred extra, Clark three, Dillingham thirty, all thousand.

"JOHN G. WINTER."

R., pp. 73–'4.

On July 25, M. F. Mott, representing the Farmers' Loan and Trust Company in Texas, wrote to Turner, McClure & Rolston as follows:

"After full confidence with parties here, we find a settlement as matter of compromise can be made upon following terms, to wit: Dillingham, receiver, $20,000.00 in addition to what he has received; Farrar & Kruttschnitt, including compensation as counsel for Morgan's Company, five thousand in addition to what they have received; Baker, B. & B., ten thousand additional. All of Mott's firms, seventy-five hundred. These offers of compromise are predicated upon immediate acceptance and payment; if not accepted, Dillingham, Clarke, and Farrar & K. will file exceptions that allowances to them are inadequate, and other parties will claim full amounts allowed by master. We advise acceptance of offer. Think they are the best you can get. See Clarke in person. Of course offers are made as a compromise and without prejudice.

"M. F. MOTT."

R., p. 74.

On July 27 M. F. Mott wrote to Messrs. Turner, McClure & Rolston again as follows:

"To McClure & Rolston, 22 Williams street, New York:

"Winter writes me that he will change his report so as to allow Dillingham five thousand per annum, less amounts

received; B., B. & B. three thousand per annum. This increases somewhat their allowances, but does not affect compromise offers. Wait for my letter of yesterday.

M. F. MOTT."

R., p. 74.

In a letter from M. F. Mott to H. B. Turner, of July 26, 1891, in reference to what Dillingham claimed, he uses this language:

"First. As to Dillingham, he was disappointed in the amount of the award, and insisted that it should not be less than $30,000.00 in addition to the amounts already received. He was present with his attorney, who had prepared objections to the draft of the report on several grounds, and was ready to present and argue the same. The proposed report gave him in the neighborhood of twenty thousand dollars additional, with which he was not satisfied, and he claims ten or twelve thousand in addition to the allowance. I think that you and I know pretty well that he would get all he claims at the end of a litigation. It was with much difficulty he could be induced to make the offer. He seemed entirely confident and regards a ten-thousand-dollar abatement in his claim as a great concession. I think he was in serious earnest" (R., p. 76).

On July 24, 1891, Herbert B. Turner, of the firm of Turner, McClure & Rolston, wrote to Charles Moran, Esq., chairman of the purchasing trustees, a letter, in which he says:

"My correspondent telegraphs me that he has had a full conference with the parties at Houston, and was authorized to submit the following figures for a settlement as a matter of compromise: Dillingham, receiver, twenty thousand dollars. * * * These offers, he says, are predicated upon immediate acceptance and payment, and are the results of a long conference. It is necessary to know what will be done by the committee, because the parties in interest desire to file exceptions against the referee's report if an arrangement cannot be made; Dillingham, Clarke and Farrar & Kruttschnitt will file such exceptions on the ground that the allowance made to them is inadequate. The other parties,

unless the settlement is made, will claim the full amounts allowed by the master, as above suggested. We suppose you know that this matter will be in the hands of Judge Pardee for settlement, unless an arrangement is made. Of course it is desirable to make an arrangement, but you must yourself judge whether you are likely to fare better or worse by bringing the matter before the judge. Of course these matters must be arranged before possession can be obtained. Please get the opinion of the committee, and let us hear from you as soon as practicable.

"Very truly, HERBERT B. TURNER."

R., pp. 80 and 81.

Mr. Dillingham, in addition to his testimony, introduced in evidence a letter written to him on March 12, 1894, by Henry K. McHarg, one of the purchasing committee, in which letter, among other things, he says:

"I also notice that Mr. Winter has made a report up to December 31st, 1892, inclusive, of the balance on hand. I supposed that when the road was sold his compensation as special master ceased, and that in fact there was no one under pay except yourself, as receiver, until your discharge" (R., p. 111).

This letter is relied on as an admission by Mr. McHarg that Dillingham was to receive his compensation until his final discharge, but Mr. McHarg, in his testimony, explained this letter to the entire satisfaction of Master Lathrop and of the circuit court. Referring thereto, he says:

"I did not write the letter with the idea he was entitled to the $150 per month, or to any additional sum over the $20,000, for I considered that amount an outrage upon our committee to pay at the time, but we seemed forced to do so and had to submit. In fact, my letter was sent to him simply to try and limit our payments in the future, not with the idea or thought that he was entitled to anything, and, as you will notice, was written on March 12, 1894, when the Texas Central Railway Company had assumed control of the property September 25, 1891, or nearly two and a half years after we had been in possession" (R., pp. 69, 70).

The foregoing is a fair statement of all the testimony, pro and con, introduced before Special Master Lathrop on the point as to whether the $20,000 was paid in compromise settlement of the claim set up in Dillingham's petition for "such an allowance for his services as receiver in the above-entitled cause from the date of his appointment until his discharge." That there was a compromise the circuit court of appeals distinctly finds in its opinion in the following language:

"At the time of the sale of the railway property under a compromise arrangement Receiver Dillingham was paid $20,000."

That it was a compromise of the claim set up in his petition for final compensation is a fact so patent on its face we are unable to conceive how it could be determined otherwise, and that his petition *demanded compensation from the time of his appointment until his discharge* plainly speaks for itself. May an appellate court set aside a finding of fact by a master supported, as this appears to be, by the weight of the evidence? Would this court set aside that report? Is there really a rule whereby we may be governed in judging what will be done with a master's report? We think such rule is firmly established by this court and closely adhered to. This court will not disturb a master's report of facts unless it is clearly wrong. (See cases quoted in former part of this brief.)

The second of the above facts found by the master is:

"Since turning over the rolls, etc., to the purchasing trustees, the duties and labors of the receiver, as appears from the evidence, have not been arduous."

And, further, that:

"By receiving $150 per month from September, 1891, to April, 1893, has been much more than compensated for any labor he has performed as such receiver, from September, 1891, up to the present time."

These findings are clearly supported by the testimony, but they are not essential facts conducing to show whether or not the compromise agreement was entered into, but show clearly that Mr. Dillingham was not, by the circuit court, dealt with harshly, and that he has no equity in his claim to the money, and has been more than fully paid for all services. The testimony on this subject is likewise conflicting, but preponderates in favor of the master's findings. On this subject Judge Newman, in the opinion, says:

"It is difficult to determine from the record exactly what services beyond perfecting land sales and preserving the fund the receiver rendered after the sale of the railway."

The period from April, 1893, to April, 1895, is the time to which special attention should be directed, for the period from September, 1891, to April, 1893, is not involved in this contention, as Dillingham received the $150 per month during that time, and Master Lathrop reported against us for that period, because the reports of Master Winter approving the receiver's accounts for that period had not been excepted to in time. The money for that period was taken and appropriated by Dillingham without the knowledge of the purchasing trustees, and therefore before they had begun to object to his accounts, and the decree appealed from allows Dillingham to keep it, not because he was entitled to it originally, but because we lost our right to object by failing to act within the time prescribed by the equity rules.

Dillingham received for his services during that period about $2,850. It is only the $3,600, covering the last two years, that is in dispute here. Dillingham practically did nothing during this period except to hold in a bank, of which he was a large stockholder and vice-president, about $40,000 of these funds. Mr. Gibbs, land commissioner, testified as follows:

"Mr. Dillingham has had nothing whatever to do with said lands and lots since the sale above mentioned, in so far

as giving me instructions in any respect, or my making reports to him may be concerned; in fact, have had no instructions whatever from him since April, 1893" (R., pp. 86 to 87).

This testimony shows that Mr. Dillingham had nothing whatever to do with the lands and lots after April, 1893. His accounts for the same period show that little or nothing was being done by him. Outside of receiving the money sent him by the attorneys, who, he says, collected the few land notes that were collected, he did nothing during this period except hold the funds in his bank and disburse to himself each quarter the sum of $450. (See his reports during this period; R., pp. 124, 129, 132, 134 to 140.)

Master Lathrop, having heard all the evidence, not only concluded that the compromise agreement, as claimed by us, was established by the testimony, but that Dillingham, by receiving the $150 per month from September, 1891, to April, 1893, had been much more than compensated for all the services he had performed since the road was delivered to the purchasers down to the present time. In all seriousness, can it be said that these findings of fact are without evidence to support them? Did he commit an error in finding these facts? If so, where is the error, and where are the facts which condemn these findings? The master heard all the evidence; much of it was oral. Were not he and the circuit court much nearer the witnesses, and had they not better opportunities to judge of these facts than an appellate court could possibly have? And is not the recognition of this fact the real basis of the rule that the master's findings are entitled to so much weight?

The third of the above facts found by the master is "and such services were contemplated when the fee of $20,000.00 was paid in." This finding is clearly supported by the testimony. This is a finding that such small services as Dillingham is shown to have actually performed were con-

templated when the $20,000 was paid him. Our discussion of the first findings above makes this clear. It will be recalled that the compromise was of the claim set up in Dillingham's petition for allowance, wherein he *demanded pay from the time of his appointment to his discharge.* He agreed to accept in satisfaction of this claim $20,000. These petitioners agreed to pay said sum in satisfaction of said claim. It was to get rid of that claim that this large sum of money was paid. Their minds met and the money was paid. Dillingham was not claiming in his petition compensation down to the time he filed his petition or down to the time of the hearing before the master, *but until his discharge.* It was that claim that was compromised and settled by paying $20,000.

Mr. Dillingham's counsel at the hearing asked him the question: "Is it not a fact that the understanding was to the contrary, that you were to be compensated for matters with reference to the receivership thereafter, and that you were to continue to draw the $150.00 until the receivership closed finally," to which Mr. Dillingham answered, "I do not know that the question was discussed. I think at that time it was supposed the thing was to be closed up at once" (R., pp. 61, 62). In other words, Mr. Dillingham understood when he compromised the claim that the $20,000 was all he was to get, because it was supposed the thing was to be closed at once; and the evidence shows that to all intents it was closed at once so far as relieving him of any duties as receiver; and we are in perfect accord with Judge Newman when he says it is difficult to tell what Dillingham did after he turned over the road.

Mr. Dillingham, in his receipt to these petitioners, recites that it is "in full of my fees and charges as receiver of the Texas Central Railway Company as per agreement." All the evidence shows that the agreement whereby he became possessed of the $20,000 was a compromise of his claim for compensation until his discharge. Mr. Dillingham's atten-

tion was called to the receipt, and he did not attempt to explain it (R., p. 46). Can it be said that the finding of Master Lathrop that the services, if any, actually performed by Mr. Dillingham were not contemplated when the $20,000 was paid him? If so, where are the facts in the record which condemn them? Mr. McHarg testified that he understood it covered all his services. The master took his statement, which is in perfect accord with Dillingham's petition and receipt. A finding to the contrary would have been clearly against the weight of the evidence. Under the terms of the decree the purchasing bondholders were required to pay down enough cash to pay certain claims, including the final compensation of the receivers. They compromised with Dillingham by paying him $20,000.

In 6th Am. and Eng. Ency. of Law, 2d edition, page 711, it is said:

"As it is the policy of the law to discourage litigation and to enforce voluntary settlements effected without the interposition of the law, it has uniformly been held that the compromise of doubtful claims is valid, the mutual release of their respective rights by the parties to the controversy and the avoidance of the expense and annoyance of a suit at law being a sufficient consideration for the composition."

In support of the above proposition of law, the author cites the following cases:

Northern Liberty Market Company *vs.* Kelly, 113 U. S., 199; Central Trust Company *vs.* Wabash, etc., R. Co., 29 Fed. Rep., 554; Gaines *vs.* Molen, 30 Fed. Rep., 27; Robson *vs.* Mississippi River Logging Co., 43 Fed. Rep., 364; Battle *vs.* McArthur, 49 Fed Rep., 715; The Cayuga, 59 Fed. Rep., 483; 16 U. S. App., 557, and a number of decisions from State courts.

As the circuit court of appeals seems to have been under the misapprehension that we made no objections to the receiver's accounts until April, 1895, we desire to make that point clear. On this subject Master Lathrop finds:

"No objections were made to said reports and to the payment of said $150 per month until said master took under consideration the reports allowing to said receiver $150 per month for the months of April and May, at which time L. W. Campbell, attorney for the Texas Central Railway Company; Charles Moran, Henry K. McHarg and Cornelius B. Gold, purchasing trustees, excepted to the allowance of said payment to Dillingham; that after that date the same parties objected to the reports filed containing the charge of $150 per month paid to said Dillingham, and on April 8th, 1895, they filed objections to all the payments of $150 per month to said Dillingham from September, 1891. None of said master's reports since September, 1891, have been approved by the court, *but I consider that the reports filed prior to April, 1893, were, by the rules of the court, approved,* no objections being made thereto" (R., pp. 146–148).

The master having found that we filed proper objections before Master Winter and afterwards before the court to all of the receiver's accounts since April, 1893, and no exceptions having been made to said findings in the lower court by respondent, and there being no assignments of error calling in question the correctness of these findings, the finding ought to be held conclusive in this court.

The reports of Master Winter, covering the period from July 1, 1893, to March 31, 1895, which covers the entire period for which we recovered judgment against respondent, except the three months from April 1 to June 30, 1893, are found in the record on pages 125 to 140, inclusive. The report for the quarter ending September 30, 1893, was not filed until April 1, 1895 (R., p. 129). The report for the quarter ending December 31, 1893, was not filed until April 3, 1895 (R., p. 133). The report for the quarter ending March 31, 1894, was not filed until April 4, 1895 (R., p. 134). The report for the six months covering April, May, June, July, August, and September, 1894, was not filed until April 4, 1895 (R., p. 137); and the report for the six months including October, November, and December,

1894, January, February, and March, 1895, was not filed until June 22, 1895 (R., p. 146); and the final account was not filed until May 16, 1895 (R., p. 140).

All these reports show upon their face that these petitioners' objections were made before Master Winter to the items of $150 per month being charged by the receiver, and exceptions were filed in court to these reports and to all items showing this charge by these petitioners on April 8, 1895, which was long before some of the reports were filed and in less than thirty days after any of them were filed (R., pp. 27, 28).

The only doubt remaining is as to whether exceptions were filed before Master Winter to the receiver's account for the quarter ending June 30, 1893. Special Master Winter, in his report for the quarter ending June 30, 1893 (R., p. 127), makes it appear that no objections were urged against the receiver's account for that quarter before him, but he uses the following language in his report for the succeeding quarter:

"Mr. Campbell joined with me in an examination of the accounts aforesaid, and said that he had no objections or exceptions to make thereto, except to the two items of $150 each for salary paid to Receiver Dillingham for the months of April and May, 1893, etc." (R., p. 125).

And Master Lathrop expressly finds from the record before him, and so reports to the court, that we excepted to all charges of $150 per month in the report for that quarter, and the findings not having been excepted to, and there being no objections raised to it by any assignment of error, we deem that it is unnecessary to further discuss that question.

Equity rule 83 provides that—

"Parties shall have one month from the time of filing the report to file exceptions thereto; and that if no exceptions are filed within that period by either party the report

shall stand confirmed on the next rule day after the month is expired."

It was upon this rule Master Lathrop found that as we had not filed exceptions to the reports of Master Winter on the receiver's accounts prior to April, 1893, we were concluded and estopped from going behind those reports.

This statement is made with the above particularity so that in reviewing the opinion of the circuit court of appeals it will not be necessary to verify this statement by the record every time we refer to this matter.

It having been shown above that the findings of Master Lathrop upon which the decree of the circuit court is based are clearly supported by the evidence, and that we in time excepted to all accounts since April 1, 1893, we invite this court to review with us the opinion of the circuit court of appeals, so that it may judge whether any reason has been shown for setting aside said findings of fact.

Review of Opinion.

That court finds that under a compromise arrangement Receiver Dillingham was paid $20,000, and further on in the opinion quotes Master Lathrop's finding of fact "that the compromise was intended as revoking the order of December 4, 1886, allowing him $150 per month, and was intended as full compensation for the services up to the time the receivership terminated." That court also finds that the report was subsequently approved by the circuit court. Upon these findings of fact, and which of necessity went to the foundation of the case, the court of appeals reverses the circuit court on questions of fact only. It is nowhere held that the findings are either not supported by the evidence, or that the compromise agreement is illegal, invalid, or contrary to public policy. Still the court reverses the decree appealed from and orders the exceptions

to be dismissed. Allowing the master's findings to stand and tacitly conceding their correctness, the court of appeals evades their force and effect by a general argument of confession and avoidance and recites a number of facts, nearly all of them taken from reports filed by the former master, Winter, on the receiver's accounts for the years in question, but which reports had been duly excepted to by us, never approved by any court, were set aside and the accounts re-referred to Master Lathrop, and are supported by no evidence in the record and which are of necessity, under the circumstances, binding upon nobody. What is not taken from the findings of Master Winter are extracts from orders entered by Judge Pardee subsequent to the compromise agreement providing that the court shall still hold possession of the property not sold.

The court, in reciting the unconfirmed reports of former master, Winter, lays stress on the letter written by McHarg to Dillingham of date March 24, 1894. This letter was written long after we had begun to object to Dillingham's accounts. Besides, Mr. McHarg fully explained this letter and testified that it was not written "with the idea he was entitled to the $150 per month or to any additional sum over the $20,000." Dillingham nowhere claimed that he relied on this letter as a reason for continuing to act as receiver. The master and circuit court passed on this evidence and found that it was fully and satisfactorily explained. No estoppel arising from this letter is pleaded.

The extracts from the reports of Master Winter and from the orders subsequently made consume almost the entire opinion of the court.

The court, having stated the sase as above indicated, finds that "those who are mostly interested in the compensation of the receiver appear to have made no objection at all to his receiving the $150 per month at any time." It already appears very clearly that these petitioners represent the first-mortgage bondholders and that these bondholders have

a judgment against the Texas Central Railway Company amounting to over $4,000,000, $3,000,000 of which is unpaid and unsatisfied (R., pp. 7 to 17). The decree appealed from in this case shows that the $3,600 required to be refunded by Dillingham is to be paid into court and to constitute a part of the funds of the receivership (R., p. 151). The record shows that the Morgan's Louisiana and Texas Railroad and Steamship Company has a judgment against the Texas Central Railway Company for about one-fifth or one-sixth of this amount (R., pp. 7 to 17). These are the only parties at interest, except the defunct corporation, the Texas Central Railway Company, which can have no interest whatever in this controversy; therefore it cannot be said that those mostly interested stood by and made no objections at any time, for the purchasing trustees are the ones mostly interested of all parties.

The opinion proceeds:

"Conceding the purchasing committee to have been interested in this question of compensation, they stood by for years and allowed the receiver, Dillingham, to pay himself this amount, simply objecting during the last two years, and having their objections overruled without further action."

This is a misconception of the record. The testimony of Mr. McHarg, a member of the purchasing committee, shows that all the committee reside in New York; that they knew nothing of this matter until they discovered, about 1893, that Dillingham was taking out of the funds this $150 per month. They then begun to actively object and have kept up the fight until the present time. They have never abandoned their rights since they discovered they had any.

The court say further:

"No effort seems to have been made to have the receiver discharged."

Under the compromise agreement reported by Master Lathrop, the receiver should not have been discharged until

the circuit court thought proper to do so, and the fact that the receivership was allowed to continue is not only no evidence that Dillingham did not enter into the compromise agreement whereby he received the $20,000 in a lump, without delay or litigation in full of his fees and charges and in lieu of the $150 per month, but is entirely consistent therewith.

The court say further:

"No motion appears to have been made to have the court reduce the amount of his compensation. The orders fixing his compensation originally were allowed to stand."

The amount of Mr. Dillingham's compensation was fixed by himself with those who, under the final decree, were required to pay it. The testimony shows that he contended for $30,000, and finally accepted $20,000 in addition to the amounts he had already received, and we do not understand that where an order, judgment, or decree, in favor of any party, including a receiver, has been compromised, that it is necessary to have a formal order entered by the court showing the compromise in order to protect the rights of the parties. If the order be not made, but it be proven that the claim had been compromised, and the original order in fact revoked in consideration of a large sum of money, no court would hold that the parties were estopped because a formal order of the court had not been entered showing this fact. It therefore cannot be said that the order fixing his compensation originally was allowed to stand. Under the master's finding it never had any substantial existence after the claim of Dillingham was compromised and settled.

The court say further:

"The orders passed at the time of the sale of the road, and the confirmation of sale, directing a continuance of the receivership, stood unchanged."

The orders referred to by the court are those quoted in the former part of the court's opinion. One of these orders was entered about the time the compromise was entered into and the other some time thereafter. The effect of these orders is simply to show that the court retained jurisdiction over the small amount of property, such as a few scattering town lots and a few tracts of land that were not foreclosed and sold out under the decree of foreclosure. We do not understand that there was any reason why these orders should be revoked or in the least interfered with in order to preserve the contract rights of the parties and to hold Receiver Dillingham to his contract of compromise. Just what effect these orders really have upon this case is difficult for us to understand. The testimony of Mr. C. C. Gibbs shows that every acre of land and every town lot held by virtue of the above-mentioned orders was sold under execution by the United States marshal on November 7, 1893, and purchased by himself and Charles Hamilton.

He further testifies:

"Mr. Dillingham has had nothing whatever to do with said lands and lots since the sale above mentioned, in so far as giving me instructions in any respect, or me making any reports to him, may be concerned; in fact, have had no instructions from him whatever since April, 1893."

With this state of facts in view, we hardly think this court will hold it was necessary in order to preserve our contract rights that the orders of August 28 and November 4, 1891, should have been revoked or abrogated, as the circuit court of appeals seem to think.

The court proceed and say:

"And yet after the receiver had proceeded until 1895 with all the responsibilities, obligations, and duties of the receivership upon him, and after he had retained under the still existing orders of the court the amount allowed him by that order, a motion is made to require him to refund the money, and to pay it into the registry of the court."

As shown above, we did not wait until the receiver had proceeded until 1895, as supposed by the court. We began to object as soon as his report, beginning with April 1, 1893, was filed with Master Winter, and the contest has been continued ever since. Where the court gets its understanding that we began to object in 1895 is, we suppose, from the fact that we filed a general objection to all of his accounts when Master Winter finally filed them in court and his reports thereon about April, 1895, but his and Master Lathrop's reports show that we had been objecting to all of them since April, 1893.

The court say further that our motion was "accompanied with damaging, but wholly groundless charges affecting the honor and honesty of Mr. Dillingham." We charged that he received $1,000 per year from his bank and that this was received in consideration of the $40,000 deposited by him in the bank. This, like other charges frequently made in the courts, was not proven, but it does not follow, as the court seems to think, that because we have assailed his honor and honesty that Mr. Dillingham should be excused from standing up to his contract of compromise, whereby he agreed to accept and did receive the $20,000 in compromise of his claim for compensation from the date of his appointment until his discharge and when he gave a receipt showing that it was "in full of my fees and charges as receiver of the Texas Central Railway Company." It may be conceded that we did him an injustice, but that is a different question from the one the court was called to decide and the one we are now presenting. That question was finally decided against us by Master Lathrop, confirmed by the circuit court, and from which finding no appeal was prosecuted by any party, and the circuit court of appeals does not make it appear as to what relevancy that branch of the case can have to the proposition under discussion.

The court say:

"Why the receiver should have been permitted to go and receive this $1,800.00 per annum without any movement on

the part of those interested to change the existing status is difficult to understand, except upon the theory that his services were valuable and necessary."

The witness McHarg fully explained his reason for not excepting to these items until 1893, which was because he did not know anything about it, and that he begun to make objections as soon as he was apprised of the fact that Mr. Dillingham was claiming the $150 per month in addition to the $20,000, so it cannot be presumed in the face of this record that he was allowed to draw the $1,800 per annum on the theory that his services were valuable and necessary. Besides, the record shows that for the last two years he performed no services. There was no land or town lots on hand; they had all been sold out, and the judge who wrote the opinion seemed perplexed to discover from the record what services Mr. Dillingham did perform, even after the road was turned over, to say nothing of the last two years.

The court say further:

"When the purchasing committee excepted to the master's report, and their exceptions were overruled, they seem to have acquiesced all along until suddenly in 1895 this proceeding was instituted."

The court seems to be under the impression that we only begun to object in 1895, when we filed our exceptions in the court, but the reports of Master Winter and of Master Lathrop clearly show that we begun when the report beginning with April, 1893, was filed with Master Winter.

The court further say:

"The payment of the $20,000.00 as a compromise of the receiver's services was proved to have been based on the understanding that the receivership was then to be wound up and the receivership discharged, and did not in any way so far as we can see affect the order of the court making the monthly allowance to Dillingham."

The finding of Master Lathrop to the effect that "the compromise was intended as revoking the order of December 4, 1886, allowing him the $150.00 per month, and was intended as full compensation for the services up to the time the receivership terminated," is left unnoticed by the circuit court of appeals. It is nowhere held that that finding is without evidence to support it, yet in the face of that finding the court say that the compromise was based upon the understanding that the receivership was to be then wound up and the receivership discharged and did not in any way, so far as they could see, affect the order of the court making the monthly allowance to Dillingham.

The court, in making the above statement, has evidently gotten its understanding of the evidence from the testimony of Mr. Dillingham, but Mr. Dillingham did not testify, nor did any other witness, that the payment of the $20,000 "was based upon the understanding that the receivership was then to be wound up and the receivership discharged." Mr. Dillingham says: "I do not know that the question was discussed; at that time *I think it was supposed* that the thing was to be closed up at once" (R., p. 46). Please note the language. At the time he was testifying he seemed to think it was supposed the thing would be closed up at once—an exceedingly vague statement to be substitued in the place of the solemn finding of a master, supported by the confirming decree of the circuit court. Mr. Dillingham could not have supposed and did not testify that the thing was to be closed up at once, for he says: "When the railroad was turned over to the trustees, there was left in my hands a large amount of lands, town lots, notes that had been given for town lots and lands that had been sold; the lands and town lots for sale, and the notes for collection, and I had general charge of the collection of these notes, and disposition of lands and lots and looking after the property left in the hands of the receiver," and that he had about $40,000 in cash left on hand (R., pp. 36 and 37). As

stated above, he nowhere uses the language that there was an understanding about these matters; and the further statement of the court that the payment of the $20,000 did not affect the drawing of the $150 per month is shown by Mr. Dillingham's own testimony to have been not discussed. Indeed, it was altogether unnecessary to discuss that question, because Dillingham's petition for compensation, and those of all the other claimants being pressed at the time, and Mr. Dillingham's receipt for the $20,000 showed very plainly what was claimed by him and what was being compromised. Mr. McHarg testified contrary to the court's statement above. Dillingham's petition and his written receipt testified to the contrary, and the correspondence between the attorneys introduced and read in evidence testified to the contrary. So it cannot be said that this money was paid upon that understanding, and without affecting the order of the court making him the monthly allowance, unless it be true that the solemn finding of a master, approved by the circuit court, based upon the preponderance of the testimony, are utterly worthless and must be set aside, and the mere thoughts and suppositions of an intested witness, contradicted by his own written statements, be accepted in their place.

But it may be granted that he and all parties mutually agreed in supposing that the thing was to be closed up at once. Can that fact have the effect of discharging Mr. Dillingham from his solemn engagement to accept the large sum of $20,000 in full of his fees and charges, without delay, expense, or litigation, in lieu of the $150 per month?

If this supposition formed an essential inducement, and was one of the substantial conditions upon which the compromise agreement was entered into, and was broken without his fault, that fact, if true, might have been pleaded by Mr. Dillingham as an equitable ground for asking relief from his contract. But he puts forth no such defense. He

nowhere asks to be relieved from his contract. Unlike the circuit court of appeals, he pleads no confession and avoidance. His sole defense is a general and vigorous denial of our facts.

The court further say:

"And if it can be so construed, why was it not brought to the attention of the court at the time, certainly at the end of the first quarter after the sale when the receiver's accounts were filed?"

This has been fully explained by Mr. McHarg, who testified that he did not know Mr. Dillingham was claiming or drawing this $150 per month until he began to object. Estoppel is not pleaded. If it were pleaded and insisted upon, there is no element of estoppel in the facts of this case. Suppose it be conceded that the master's finding is correct, and that the $20,000 was paid in compromise of Dillingham's entire services, and that we knew Dillingham was drawing this $150 per month, and raised no objections whatever until April, 1893, is there any element of estoppel in that kind of a proceeding? Is Dillingham put in any worse position? Is he not put in a better position by the sum of $2,850 by our failing to object? If the compromise was made as the master reported, Dillingham was clearly not entitled to the $2,850, and he got that solely because we did not object in time. The $3,600 in dispute was taken in the face of our objections and while we were objecting.

The court proceed:

"The finding of the special master is that up to April, 1893, the compensation should be allowed, because the accounts having been filed, and there being no objections, they stood presumably approved by the court under the rule. If the approval of the court is presumed up to April, 1893, why is it not equally true that the approval of the court is presumed to the receiver's continued receipt of this amount?"

The above statement and inquiry do the court an absolute injustice. It is based upon the idea that the circuit court was continually approving these accounts, and the judge writing the opinion doubtless did not have in mind the equity rule that all reports of a master in chancery stand approved if not excepted to within thirty days. That was the ground upon which Master Lathrop found against us on our exceptions to the money taken prior to April, 1893. Dillingham's reports were during that period regularly filed with Master Winter. He passed upon these reports and allowed the claim of $150 per month, and filed these reports in the circuit court, and as we did not except to these allowances within the thirty days allowed under the equity rule, they stood approved, not by any presumptive action of the court, but absolutely as a rule of the court. There is no logic in the suggestion that because they were approved by a rule of the court on account of our failure to except within thirty days that the approval of the court is presumed to the receiver's continued receipt of this amount, after we began to object. This could not be presumed, because we excepted within the proper time, and have followed up these exceptions continually. Both of the master's reports and the entire record show this.

The court say further:

"If the compensation was to run at all after the sale of the road, and the payment of the $20,000.00, there was no reason for stopping it in April, 1893. If it continued rightfully, it continued by virtue of the original order allowing it in 1886, and it continued until the receiver was discharged, and so, instead of the approval of the court operating to justify the allowance up to April, 1893, and no longer, its effect would be to approve the allowance under the original order so long as Dillingham continued to act as receiver."

Under the master's finding it did not continue rightfully after the $20,000 was paid, and this money was taken wrongfully and in violation of Mr. Dillingham's contract of com-

promise with the committee until discovered in April, 1893, and it does not follow that it should continue until 1895, because we had slept on our rights under a rule of the court and had lost the $150 per month from September, 1891, to April, 1893.

The court proceed:

"It is difficult to determine from the record exactly what services, beyond perfecting land sales and preserving the fund, the receiver rendered after the sale of the railway."

We agree with the court that it is difficult to discover from the record what services Mr. Dillingham did perform during this time; but whatever they were, Master Lathrop finds were more than paid for, as shown above.

The court say further:

"But it is certainly true that if the purchasing committee, or any one interested, had moved in the matter before the court, the monthly compensation Dillingham was receiving, if too large, would have been reduced to the proper amount, or he would have been discharged and some other arrangement made for winding up the outstanding business."

The compensation that Mr. Dillingham was entitled to receive had already been paid him, and there was no necessity of appealing to the court until we discovered that Mr. Dillingham was violating his contract. When this discovery was made we objected in the proper manner, keeping up these objections, and finally filed our objections in the proper court and secured an order holding Mr. Dillingham to his contract, and this is as much as any one would be called upon to do. We had every reason to suppose Mr. Dillingham would stand up to his agreement. The fact that we did not object in time to save some of the money is no reason why we should be deprived of the right when we discovered he was violating his contract and save as much as possible of the money he was wrongfully taking. It is very true that if any one interested had moved in the matter

the circuit court would have reduced the compensation. That is precisely what was done. We objected just as soon as we got the information. The circuit court promptly acted, and the result of its action was to not only find the existence of the compromise agreement, but it found further that Dillingham had received much more than all his services were worth by taking the $2,850. This was in effect reducing his compensation to an average of about $67.90 per month, covering the entire period of forty-two months from September, 1891, to April, 1895. And yet while the circuit court did this upon a full hearing of the evidence the court of appeals reverses the decree when the opinion suggests that that would have been the proper course to pursue, and, in doing so, ignored another settled rule of this court "that the compensation to be allowed a receiver for his services, and those of his counsel, is largely discretionary with the court from which he derives his appointment, and its action will not be disturbed unless the discretion is abused" (Stuart *vs.* Boulware, 133 U. S. 78, (S. C.) 10 Sup. Ct. Rep., 242). It is nowhere claimed by the circuit court of appeals or by Dillingham or his counsel that the allowance of $2,850 was inadequate, or that the circuit court abused its discretion in holding that he was more than compensated for any services he performed after the road was turned over to the purchasers by receiving said sum of $2,850.

The court say:

"Nothing of this sort was done, however, and he was allowed to go on as receiver with all the responsibilities attached to that position."

The master's findings show that he was to go on and perform such small duties as were required at his hands for the $20,000.

And the court say further:

"And if entitled to compensation at all, after the sale of the railway, we see no reason why he is not entitled to it up to April, 1895."

The only way the court can arrive at the conclusion that Dillingham was entitled to compensation up to April, 1895, is by ignoring the findings of Master Lathrop to the effect that "the compromise was intended as revoking the order of December 4th, 1886, and was intended as full compensation for the services up to the time the receivership terminated." We concede that by substituting the thoughts and suppositions of Dillingham for all the other testimony in the record, and for the findings of Master Lathrop, and for the decree of the circuit court, the conclusion is logically reached that he is entitled to compensation up to April, 1895.

The court, having disposed of the case in the manner above indicated, say:

"We are of the opinion that the report of the special master, and the decree of the court below confirming the same, are erroneous. The decree of the circuit court is reversed and the cause is remanded with directions to overrule and discharge the motions attacking the receiver's accounts."

It has been with the utmost difficulty that we have been able to find upon what ground the decision rests. It must rest, if at all, upon the proposition that Mr. Dillingham's thoughts and suppositions are entitled to greater consideration than the testimony of all the other witnesses, all the facts and circumstances adduced in evidence, the conclusions of Master Lathrop, and the decree of the circuit court confirming his conclusions.

If this be true the opinion is correct. If the decree of the circuit court, the report of the master, and the overwhelming preponderance of testimony against Mr. Dillingham be

given the credence ordinarily given by this court to the findings of a master, and a preponderance of the testimony supporting them, the opinion of the circuit court of appeals is logically erroneous and should be quashed by this court and a decree entered here affirming the decree of the circuit court.

It appearing that Judge Pardee was recused and that the circuit court of appeals have ignored the settled rule of this court that a master's report of the facts will not be disturbed or modified unless it clearly appears to be erroneous and without evidence to support it, we ask that the decree of the circuit court of appeals be reversed and that the decree of the circuit court be affirmed.

Respectfully submitted.

L. W. CAMPBELL,

Solicitor for Amedee D. Moran, Cornelius B. Gold, and Henry K. McHarg, Petitioners.

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No. 243.

Reply Br. of Campbell for Pet'rs

IN THE

Supreme Court of the United States

Filed April 11, 1899.

OCTOBER TERM, 1898.

No. 243.

AMEDEE D. MORAN ET AL.

vs.

CHARLES DILLINGHAM.

REPLY TO RESPONDENT'S BRIEF.

This brief will be confined to a reply to the argument of respondent's counsel on the merits. We refer the court to our former briefs for a full discussion of the question as to whether Judge Pardee was recused.

Counsel for respondent accept in their Brief, page 6, our statement of the law as to the value of reports of masters in chancery. They say they are "entitled to every reasonable presumption," and that "his report is not to be set aside or modified unless there appears to have been error or mistake on his part." Now, while this is in substance the rule, and while counsel apparently agree with us, they have failed to state the rule as forcefully as the decisions of this court require.

These findings of fact by a master, when confirmed by the trial court, "are conclusive in the absence of anything to show that they are *unsupported by the evidence*" (Davis vs. Schwartz, 155 U. S., 631).

This rule is the only true and logical one for courts of appeal; or, in other words, for courts of review, as distinguished from trial courts. The duty of the trial court is to weigh and sift the evidence. They have opportunities to do this superior in every sense to a court of review. Upon the other hand, it is no part of the duties of courts of review to sift or weigh the evidence. They could not do so with any satisfaction to themselves for lack of proper knowledge of the witnesses—their manner of testifying, &c.—so essential to a proper performance of this duty; so the court of review confines its investigations to such examination of the evidence as will determine whether there is any testimony in the record to support the findings of the master. When this duty is performed the review court has fully met the requirements of the rule. To stop at this point is to perform the full duties of an appellate court. To go beyond that point and to undertake the task of sifting and weighing the testimony is not only a radical departure from the rule, but is an intrenchment upon the duties of the master and trial court. In no instance, so far as we know, has this court done this, but has invariably halted when it came to the limits prescribed by the rule. The true and only question, therefore, on the merits of this case is whether there is any evidence in the record supporting or tending to support the master's findings of fact. We briefed our case from this standpoint and showed (our Brief, pages 14 to 33) that there was ample testimony to support the master's findings. We will not repeat

what we say there; but by turning to the brief of respondent's counsel it will be seen that while they agree with us as to the law of the case, they nowhere claim or assert that the findings of the master are without evidence to support them. There is not to be found in their brief any such contention. They assert that the master erred and made a mistake in reporting the facts, and they discuss the evidence on several issues and claim that the evidence preponderates in favor of respondent; but they in no part of their brief contend or even claim that evidence is lacking to support the findings. The effect of respondent's brief is but a request to this court to overrule its decisions, limiting the inquiry in such cases, and to retry the case on the merits—to sift and weigh the testimony of each witness; and it is upon the idea that this will be done that counsel have prepared their brief, and they present no other phase of the case. Respondent's case is presented here in exactly the same manner it was presented before the master and the trial court. Please see what is said in their Brief, pages 6 to 15. Now, while we do not in the least dread an examination of all the evidence by this court, we insist that we are entitled to the full benefit of the rule, and that the master's findings are conclusive unless without evidence to support them. Now, as respondent's counsel concede the existence of this rule, but have not shown or attempted to show that the findings are without support from the evidence, and as we have shown that they are clearly supported by the evidence, the decree of the appeal court ought to be reversed and that of the circuit court ought to be affirmed.

But if this court should disagree with us and conclude

that it is its duty to go through the evidence and weigh and sift the testimony of each witness, we invite the court's attention to the evidence as printed in the record and all the other proceedings found in the record. In particular, attention is called to our Brief, pages 10 to 33, where we discuss the merits and go over the evidence and show, we think, clearly that the evidence preponderates in favor of the master's findings. Please also see our review of the opinion of the court of appeals, pages 33 to 47. It will be seen by reading what we say there that every argument made by respondent's counsel has been anticipated and fully met. We will not burden the court with a restatement of the arguments there made.

Respectfully submitted.

L. W. CAMPBELL,
Solicitor for Petitioners Moran, Gold, and McHarg.

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No. 243.

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Brief of Clark for Respondent.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

Filed Mar. 17, 1899.

No. 243.

AMEDEE D. MORAN ET AL., PURCHASING TRUSTEES, PETITIONERS,

versus

CHARLES DILLINGHAM, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF RESPONDENT.

GEORGE CLARK,
D. C. BOLINGER,
Counsel for Respondent.

PRESS OF ROBB BATTLE, WACO.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

No. 243.

AMEDEE D. MORAN ET AL., PURCHASING TRUSTEES, PETITIONERS,

versus

CHARLES DILLINGHAM, RESPONDENT.

BRIEF OF RESPONDENT.

The statement of the case in the brief for petitioners is in a general way correct, with the exception of certain important omissions which will be noticed in the brief of the argument herein submitted.

Respondent submits in reply the following propositions:

PROPOSITION I.

The fact that Hon. Don A. Pardee, Circuit Judge, entered orders and decrees in the original cause of Morgan's Louisiana and Texas Railroad and Steamship Company vs. The Texas Central Railway Company, did

not disqualify him from sitting on appeal in this cause, which was a separate and distinct matter under the act of March 3rd, 1891.

PROPOSITION II.

The Circuit Court of Appeals in deciding the case did not invade the province of the trial Court and Master in setting aside the report of the Master and the decree of the Circuit Court, because it clearly appeared therefrom that such report and confirmation was erroneous and mistaken on the part of the lower tribunals upon the indubitable facts contained in the record.

BRIEF OF THE ARGUMENT.

Upon the first proposition submitted above as to the disqualification of Circuit Judge Pardee, counsel for respondent submits that such disqualification did not obtain. The act of March 3rd, 1891, is peculiar in this, that it seems to provide for non-disqualification expressly for a case similar to this at bar. The language of the statute is as follows:

"That no justice or judge before whom *a cause or question* may have been tried in the District Court or existing Circuit Court shall sit on the trial or hearing of such *cause or question* in the Circuit Court of Appeals."

Had the usual language been employed which obtains in all our state constitutions, the contention of petitioners in this cause might have some foundation upon which to rest. I say "some foundation" with a qualification that even in that event the disqualification of the judge would not be apparent. Speaking accurately, the cause submitted to the Circuit Court of Appeals in May, 1896, was not the cause in which Judge Pardee made certain orders up to the fall of 1891. That cause was Morgan's Louisiana and Texas Railroad and Steamship Company et al. vs. The Texas Central Rail-

way Company. The cause heard by the Circuit Court of Appeals at New Orleans was the cause of Charles Dillingham, appellant, vs. Amedee D. Moran et al., purchasing trustees. The titles of the two causes were different. the parties were different, their numbers were different and the issues involved were different. So even giving to the statute the broadest interpretation possible, the two causes were not the same. The statute says, "a cause *or* question." Subjected to proper construction, these words could not be extended so as to disqualify a judge who had decided on the circuit the very question presented for decision on appeal in some other case, because that would involve an absurdity on its face. Evidently the legislative mind in the enactment of the statute contemplated what is very often the case, especially in equity, that a question may arise or an issue may be presented practically foreign to the issues involved in the original cause which being decided upon the circuit is appealed for revision to the appellate tribunal without involving in any manner the main controversy. Of course if this suit here now on certiorari involved the final decree appealed from in the original cause, Judge Pardee would be disqualified; or had the judge presiding on the circuit, upon the hearing of the issues presented by the exceptions of petitioners herein to the original Master's report in April, 1895, have rendered the decision therein, he would, in like manner, have been disqualified. But such is not the case at bar. The last order entered by Judge Pardee upon the circuit in the original cause was in the latter part of 1891, as shown by the record. This controversy arose in 1895, having no reference to or connection with the issues between complainants and respondents in the original cause. Upon application of these petitioners an order was entered upon the circuit by Circuit Judge McCormick referring to Receiver's accounts back to a new Master, in compliance with a violent attack upon the Receiver involving the charges of mal-

feasance, misapplication, fraud and concealment on his part of the trust funds in his hands. The issues made by petitioners in their pleadings were finally heard and determined by the Hon. Charles Swayne of the Northern District of Florida, sitting by assignment in the Circuit Court for the Northern District of Texas, at Waco, and these issues were presented by the petitioners herein, to-wit:

1. That respondent had performed no services entitling him to charge the sum of $150.00 per month and was not authorized to retain the same by any order of Court from the first of July, 1893, to April, 1895.

2. That respondent during that whole time had been drawing practically as interest on deposit of the trust funds from a bank in which he was interested, the sum of $1000.00 per annum, which was received by him personally and appropriated to his own use. (R. pp. 27-28.)

These were the issues upon which the reference back to the Special Master was made by Circuit Judge McCormick on April 8th, 1895. (R. pp. 28-29.) Afterwards, to-wit, on November 4th, 1895, the petitioners filed with the Special Master what they call an "amended exceptions of purchasing trustees," in which they elaborate these contentions, but without substantially changing the issues originally presented by their former exceptions, except that petitioners charge the respondent, in addition to other crimes formerly charged, with making false reports under oath to the Court with reference to the moneys handled by him under the order of the Court. (R. pp. 29-31.) The questions, therefore, presented to the Circuit Court were:

First. Had respondent performed any services entitling him to retain the sum of $150 per month from 1891 to 1895?

Second. Had he acted fraudulently and violated his

trust as Receiver in manner and form as complained of?

Third. (by amendment) Whether the payment of the sum of $20,000 in 1891 and the receipt by the respondent of that sum, was paid and received with a full understanding and agreement on each side that it was to cover all services of respondent to the final termination of the receivership.

The record fails to disclose that Circuit Judge Pardee had ever tried in the Circuit Court either one of these questions. On the contrary, it conclusively establishes and is admitted that he had not. How, then, can it be maintained that he was recused from disposing of these issues on appeal? He had not tried the cause; neither had he tried the questions on the circuit. And the mere fact that this cause arose out of the original cause of Morgan's Louisiana and Texas Railroad and Steamship Company vs. The Texas Central Railway Company cannot subject him to disqualification, because frequently and independently one suit is dependent upon another with which it has no legal connection, but to which it owes its origin. The purpose of the statute of course is manifest and proper, but the attempt on the part of petitioners to distort it, is not only manifestly erroneous, but would subject the Courts to serious disturbance and inconvenience.

Counsel for petitioners seems to lay stress upon the idea that the decision of the questions involved in this particular cause depended upon the construction of an order entered by Circuit Judge Pardee in 1886, allowing the Receiver on current account $150 per month to the termination of the receivership and urged that this order, having been entered by Circuit Judge Pardee upon the circuit, necessarily disqualified him from construing its provisions. If this idea should be carried into practical effect, it would paralyze the judiciary. This Court is frequently called upon to construe its own orders and decrees in other cases and to explain

what was meant by its former decisions. This Court is also frequently called upon to explain and expound what was the legal effect of orders and decrees or its several members on the Circuit which were involved in subsequent independent litigation. If recusation followed in the one instance, it ought to follow in the other, and the tongues of our judges would be palsied by the principle invoked herein.

We submit, therefore, upon the first proposition that Circuit Judge Pardee was not disqualified from hearing the cause on appeal and that the writ of certiorari herein granted should be discharged

2.

In the second proposition there is no controversy between counsel for petitioners and counsel for respondent as to the law and the rules established by this Court. The Master's finding is entitled to every reasonable presumption in his favor, and is not to be set aside or modified unless there appears to have been error or mistake on his part. This is an established principle which no lawyer ever contradicts. That conceded, however, leaves the true question still open for determination Plain error was established by the record and against the Master's finding. The order of December 4th, 1886, directed that the allowance of $150 per month to the respondent as receiver should continue so long as he "gives his personal attention to the business of the company, or until the further order of the Court." (R. p. 6.)

The finding of the Master is that the compromise made in September, 1891, allowing C. Dillingham, Receiver, $20,000 was intended as revoking the order of December 4th, 1886, allowing him $150 per month. (R. p. 147)

The Master does not vouchsafe how the decree of a

Court can be revoked by the act of private parties, but it seems that he found this as a fact. Plainly, this was an error and mistake in the face of the record, for such revocation could not thus occur, especially in view of other portions of the record, which show that after the sale of the physical property of the railroad in 1891 and upon two separate petitions of these petitioners, the Court expressly retained custody of other property of the railroad company not sold, and decreed that no previous order should be construed as affecting the receivership of such property so remaining, but the same was retained by the Court in the hands of the receiver for further administration. (R. pp. 18-27.)

It was shown without contradiction that this property consisted of lands, town lots, purchase money notes and cash, all of which remained in the hands of the receiver and in the custody of the Court, and was administered by the respondent as receiver during the years from 1891 to 1895, regular quarterly reports of such receipts and expenditures being filed by the receiver in accordance with the orders of the Court and as its officer.

Against this solid array of fact, petitioners make their assault by supposition, and the Master bases his finding upon the supposition, rejecting the facts. How, then, can it be successfully urged that the Master did not manifestly err in his findings? He finds that the compromise settlement in 1891 was intended as a revocation of the order allowing respondent $150 per month as receiver, and immediately upon such finding awards the receiver $150 per month (to which he says he was not entitled) for two years up to April, 1893, basing his action in this regard upon the technicality of the rule regarding confirmation of the Master's reports within thirty days after filing, if not objected to. If the order of 1886 was revoked by the compromise, it would seem logically to follow that the respondent was not entitled to anything from 1891 to 1895 for his services as re-

ceiver, notwithstanding the failure of petitioners to except to the reports of the Master approving such allowance. The question submitted was not one of *quantum meruit*, but of legal record, and it was wholly immaterial what services the receiver performed, or was called upon to perform, upon the question of his compensation. The order of 1886 stood unrevoked until this day, the Master's finding to the contrary notwithstanding. Indeed, upon the final outcome of the issues raised by petitioners against respondent, they abandon all of such issues, including the services performed and their value, and rest their cause exclusively, as they rest it here, upon the effect of an alleged compromise made in 1891. It is therefore submitted, without going into further details, that these acts of the Master show that it was manifestly contrary to the record and contrary to law and reason; and the Circuit Court of Appeals did not err in setting it aside, as it should have been set aside by District Judge Swayne sitting upon the circuit.

3.

The main contention of the petitioners rests upon the effect of the compromise made and entered into on the 24th of August, 1891, they contending that said compromise was tendered and accepted as full satisfaction of all services of the receiver up to date of his discharge from the receivership. And to this we now address ourselves.

This contention is rested upon the following receipt:

"Received of Messrs. Moran, Gold and McHarg, purchasing committee, the sum of Twenty Thousand ($20,000) Dollars in full of my fees and charges as receiver of The Texas Central Railway Company, as per agreement.

Dated, Houston, Texas, Sept. 14, 1891.

(Signed) CHARLES DILLINGHAM, Receiver."

Counsel for petitioners seem to assume that this receipt amounts to the solemnity of an estoppel, and is not explainable. It is needless to say in reply to this that it is like any other receipt in any other Court, subject to oral explanation and qualification. Authorities are not necessary to support this statement. The circumstances and surroundings must all be taken into consideration in construing the effect of the receipt, as well as the intention of the parties. What were these circumstances as disclosed by the record? This railway property has been in the hands of the Court since 1885. Respondent had been placed in charge of the railroad under foreclosure proceedings in the Circuit Court and had acted as receiver in the active management of the property up to August, 1891. The final decree was rendered in the cause in 1887, from which an appeal was prosecuted to this Court, where the decree of the lower Court was affirmed. This involved a delay of nearly or quite four years. The railroad proper was then sold under foreclosure proceedings and such property turned over to these petitioners as purchasing trustees, who thereupon became parties to the suit, as alleged by petitioners in their amended exceptions, and as is manifest from different parts of the record. (R., p. 29.) It was supposed by all parties that this would terminate the receivership at once, and proceedings were instituted by various parties—trustee, attorneys, receiver, master, etc., to have their allowances, fixed upon the basis of an immediate termination of the receivership. This was in August, 1891. A compromise was reached upon that basis under which respondent abated his demand of $30,000 as compensation for six years work, being at the rate of about $5000 per annum, and accepted $20,000 as compensation for his services as receiver. Nothing was said on either side as to a continuance of the receivership, and it was not within the contemplation of the parties at the time the settlement was made. For reasons which perhaps pe-

titioners could explain, the receivership was continued more than four years thereafter. Respondent, in his testimony and in reply to questions propounded by counsel for petitioners, testified that M. F. Mott, Esq., attorney for the Farmers Loan and Trust Company, trustee, and for those petitioners, when approached by respondent with the suggestion as to closing up the receivership at once, which occurred somewhere about March 12, 1894; that he was told by said counsel that there were some legal questions involved that they were endeavoring to reach a conclusion upon, and would have the receivership closed as soon as possible. (R., p. 45.) The Special Master, John G. Winter, before whom claims for allowance were filed, testified that when these allowances were compromised and paid in 1891, it was upon the supposition that the receivership was to be immediately closed. (R., p. 67.) .

On August 28th, 1891, several days after the compromise was agreed upon, upon the application of these petitioners the Court entered an order to the following effect, among other things:

"That nothing in this decree contained is intended to affect, or shall be construed as affecting, the status of any pending or undetermined litigation in which said receivers appear as parties; such litigation shall continue to determination in the name of said receivers, with the right reserved to said purchasers, should they be so advised, to appear and join in any such litigation; and nothing in this decree contained is intended to affect, or shall be construed as affecting the receivership of any of the property of the defendant railway company other than the property so transferred to said purchasers, possession of which said property other than that so transferred is retained for further administration, subject to the orders of this Court." (R. pp. 18-22)

Subsequent to this, on November 4th, 1891, and upon a like petition of these petitioners, Mr. Mott, herein-

before mentioned, appearing as their counsel, the Court made a further order of exactly similar tenor and effect with reference to the continuance of the receivership indefinitely for the purpose of administering assets of the insolvent corporation not theretofore administered. (R. pp. 23-27.) Nearly two years subsequent to this, to-wit, on March 12th, 1894, these petitioners being all the while parties to this suit, as hereinbefore stated, Henry K. McHarg, the president of The Texas Central Railway Company, the successor of the former insolvent Texas Central Railroad Company, being at the general office of the company in the city of Waco, Texas, where the Circuit Court held and where its records were contained, addressed this letter to the respondent:

"WACO, TEXAS, March 12, 1894.

Charles Dillingham, Esq., Houston, Texas.

DEAR SIR:—I am somewhat surprised to find that your accounts as receiver of the Texas Central road, have never been closed. The Farmers Loan and Trust Company communicated with Messrs. Mott & Armstrong, in Galveston, in October last, urging their immediate settlement; and I understand from a letter written by them to Mr. Campbell, our attorney, in January last that your attorneys in New Orleans, Messrs. Farrar, Jonas & Kruttschnitt, agreed that it ought to be done immediately.

I also notice that Mr. Winter has made a report up to Dec. 31st, 1892, inclusive, of the balance on hand. I suppose that when the road was sold his compensation as special master ceased, and that in fact there was no one under any pay except yourself, as receiver, until your discharge.

I trust you will follow out the spirit of your attorney's suggestion to Col. Mott, and at once co-operate with Messrs. Mott & Armstrong in closing the receiv-

ership and turning over the cash and assets to their owners. Very truly yours,

HENRY K. MCHARG, President."

(R. p. 83.)

We have, therefore, a total change in the situation and conditions of the receivership that was evidently not contemplated by the parties at the time of the original agreement of compromise. We have the Court, upon the petition of the petitioners, entering an order continuing the receivership indefinitely. We have also an entire absence of complaint in the record on the part of the petitioners for several years. In addition to this we have the admission in writing of Mr. McHarg, the president of the new company, and the active manager of the original purchasing committee, conceding to respondent the right claimed by him herein that he was under pay as receiver, notwithstanding the compromise, until his discharge. We have further a recognition of the willingness of the receiver and his anxiety to be discharged from his trust but continued delay with no movement upon the part of these petitioners to qualify the order of allowance made in 1886, or to change the existing conditions in any manner whatsoever. Mr. McHarg, one of the petitioners, evidently supposed on March 12th, 1894, that the compensation of every officer under the receivership had ceased except the pay of respondent as receiver, because he says so in writing when he was on the ground when the litigation was proceeding and had evidently inquired into it. He and his co-petitioners herein were parties to the litigation and charged with notice of its progress; and yet he comes into the Circuit Court in the face of this record and alleges in a solemn pleading that he did not know anything of the retention of the allowance by respondent until a short while before April, 1895, and proceeds to charge the respondent with fraud and corruption in

retaining and using the funds of the trust imposed upon him by the Court under the law.

Counsel for petitioners dismisses this letter with a waive of the hand, as fully explained by Mr. McHarg in his testimony, which explanation, it is sufficient to say, does not explain. In his testimony he says:

"I did not write the letter with the idea he was entitled to the $150 per month, or to any additional sum over the $20,000, for I considered that amount an outrage upon our committee to pay at the time, but we seemed forced to do so and had to submit. In fact, my letter was sent to him simply to try and limit our payments in the future, not with the idea or thought that he was entitled to anything, and, as you will notice, was written on March 12th, 1894, when The Texas Central Railway Company had assumed control of the property September 25th, 1891, or nearly two and a half years after we had been in possession." (R. pp. 69-70.)

The lucidity of this explanation makes it absolutely transparent. If he did not write the letter with the idea that the respondent was entitled to $150 per month or to any additional sum, why did he say in his letter:

"I suppose that when the road was sold his compensation as Special Master ceased, and that in fact there was no one under pay except yourself as receiver until your discharge?"

Under what pay? How to be paid? From what source? He was charged with knowledge of the record under which respondent had retained under the order of the Court since 1885, on current account, the sum of $150 per month in part payment for his services as receiver. He was charged with knowledge that this order had never been rescinded. He was charged with the further knowledge that he and his co-petitioners had never made any effort to have this order qualified or taken any proceedings to reduce the amount, to

rescind the order or to close the receivership. He acknowledges in the letter that Dillingham was under pay and would continue under pay as receiver until his discharge, and later testifies that at the time he wrote the letter he did not write it with the idea that Dillingham was entitled to any additional sum over the $20,000 paid him in 1891.

Arraying the facts as found by the Master and upon the testimony contained in the record, we find that immediately after the compromise was made that contrary to the expectation of all parties and with the consent and connivance of these petitioners and substantially upon their applications, repeated to the Court, the receivership was continued indefinitely, presumably for purposes of their own. No witness testified as to any agreement that the compromise should be in full of all services of the receiver To the contrary, the testimony of the respondent and the testimony of Winter, the Special Master, who received additional compensation, the acquiescence of the petitioners, and the letter of McHarg, all stand in array to show that after the compromise, by reason of changed conditions and purposes upon the part of these petitioners in part, the receivership was continued four years and large assets were left in the hands of this receiver, for which he was responsible; that for two years of the time he was engaged actively in administering these assets; that he held the moneys of the trust safely and securely, paying it out upon the orders of the Court from time to time and rendering his reports promptly and regularly as an officer of the Court. Under this state of facts he had at least the right to anticipate that if there should be objection in any manner to his conduct as receiver, such objection should be urged in decent and respectable manner, without attacking his character as a man and as an officer of the Court, for the pitiful sum of $3600.

In conclusion, we refer this Court to the opinion of Judge Newman, of the the Circuit Court of Appeals, as embodying the law of the case and as a proper decision of the questions involved, and submit that the writ of certiorari should be discharged and that the judgment of the Circuit Court of Appeals should stand affirmed.

Geo. W. Clark

D. C. Bolinger

Counsel for Respondent.

MORAN v. DILLINGHAM.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 243. Submitted April 17, 1899.—Decided May 1, 1899.

The provision of the act of 1891, c. 517, § 3, that no judge before whom "a cause or question may have been heard or tried" in a District or Circuit Court shall sit "on the trial or hearing of such cause or question" in the Circuit Court of Appeals, disqualifies a judge, who has once heard a cause upon its merits in the Circuit Court, from sitting in the Circuit Court of Appeals on the hearing and decision of any question, in the same cause, which involves in any degree matter on which he had occasion to pass in the Circuit Court.

THE case is stated in the opinion of the court.

Mr. L. W. Campbell for Moran.

Mr. George Clark and *Mr. D. C. Bolinger* for Dillingham.

MR. JUSTICE GRAY delivered the opinion of the court.

This is a writ of certiorari heretofore granted by this court, under the act of March 3, 1891, c. 517, § 6, to review a decree made by Judge Pardee and Judge Newman in the Circuit Court of Appeals for the Fifth Circuit upon an appeal to that court from the Circuit Court of the United States for the Northern District of Texas.

The leading question presented by the writ of certiorari is whether Judge Pardee was disqualified to sit at the hearing of that appeal by the provision of § 3 of that act, "that no justice or judge before whom a cause or question may have been tried or heard in a District Court or existing Circuit Court, shall sit on the trial or hearing of such cause or question in the Circuit Court of Appeals." 26 Stat. 827.

If Judge Pardee was so disqualified, the decree in which he took part, even if not absolutely void, must certainly be set aside and quashed, without regard to its merits. *American*

Construction Co. v. *Jacksonville Railway*, 148 U. S. 372, 387.

The material facts bearing upon the question of his disqualification, as appearing by the record now before this court, are as follows:

Upon a bill in equity, filed April 2, 1885, in the aforesaid Circuit Court of the United States, by the Morgan's Louisiana and Texas Railroad and Steamship Company against the Texas Central Railway Company, to foreclose a mortgage of its railroad and other property, Judge Pardee, on April 4, 1885, made an order, appointing Benjamin G. Clark and Charles Dillingham joint receivers of the property, and appointing John G. Winter special master as to all matters referred or to be referred to him in the cause.

Upon a petition filed in that cause by Dillingham, representing that he had been the active receiver for seventeen months, and praying for an allowance for his services as such, Judge Pardee, on December 4, 1886, made an order "that the receivers be authorized and directed to place Charles Dillingham upon the pay roll of the receivers for the sum of one hundred and fifty dollars per month, as an allowance upon his compensation as receiver in this cause; this allowance to date from the possession of the receivers, and to continue while Mr. Dillingham gives his personal attention to the business of the company or until the further order of the court."

On April 12, 1887, Judge Pardee made a final decree in the cause, for the foreclosure of the mortgage; for the sale of the mortgaged property by auction; and for the payment by the purchasers of "all the indebtedness of the receivers incurred by them in this cause, including all the expenses and costs of the receivers' administration of the property," "and also the compensation of the receivers and their solicitors;" appointing Dillingham and Winter special master commissioners to make the sale, and to execute and deliver a deed to the purchasers; and reserving the right to any party to the cause, as well as to the receivers and master commissioners, to apply to the court for orders necessary to carry that decree into execution. Appeals from that decree were taken by the Morgan's

Louisiana and Texas Railway and Steamship Company and by the Texas Central Railway Company to this court, which on November 24, 1890, affirmed that decree. 137 U. S. 171.

Pursuant to that decree, on April 22, 1891, all the property mortgaged, except some not immediately connected with the railroad, was sold to Moran, Gold and McHarg, trustees for bondholders. On their petition filed in the cause, Judge Pardee, on August 28, 1891, made a decree directing Dillingham and Clark, receivers, to execute and deliver a deed, and to deliver possession, to the purchasers, of all the property, real and personal, of the Texas Central Railway Company, in the State of Texas, used for and pertaining to the operation of its railway; and providing "that nothing in this decree contained is intended to affect, or shall be construed as affecting, the status of any pending or undetermined litigation in which said receivers appear as parties; such litigation shall continue to determination in the name of said receivers, with the right reserved to said purchasers, should they be so advised, to appear and join in any such litigation; and nothing in this decree contained is intended to affect, or shall be construed as affecting, the receivership of any of the property of the defendant railway company other than the property so transferred to said purchasers, possession of which said property other than that so transferred is retained for further administration, subject to the orders of this court;" and "that said purchasers or said receivers may apply at the foot of this decree for such other and further relief as may be just." The property was accordingly delivered to the purchasers in September, 1891. On November 6, 1891, on like petition of the purchasers, Judge Pardee made a similar decree, except in directing the deed to the purchasers to be executed and delivered by Dillingham and Winter, special master commissioners, and in other particulars not material to be mentioned.

Dillingham afterwards, and until April, 1895, continued to draw and pay to himself the sum of $150 a month, and returned quarterly accounts to the master crediting himself with those sums. On August 25, 1891, he presented a petition, entitled in the cause, to the master, praying him to

"make to him such an allowance for his services as receiver in the above entitled cause, from the date of his appointment until his discharge, as to said master may seem just and proper." About the same time, a compromise was made between him and the purchasers, pursuant to which he was paid, in addition to the allowance of $150 a month for the past, the sum of $20,000 for services as receiver; and he signed a paper, entitled in the cause, acknowledging that he had received from them the sum of $20,000 "in full of my fees and charges as receiver of the Texas Central Railway Company, as per agreement." At the hearings before the master upon Dillingham's accounts, it was contested between him and the purchasers whether he was entitled to $150 monthly since the compromise. The master reported that he was; and exceptions by the purchasers to his report were referred on April 8, 1895, by order of Judge McCormick, to Abner S. Lathrop, as special master, who by his report, filed September 26, 1896, found that Dillingham was entitled to the monthly allowance of $150 until April, 1893, but was not entitled to it from April, 1893, to April, 1895. That report, on exceptions taken by the purchasers and by Dillingham, was confirmed by decree of Judge Swayne on December 5, 1896; and from that decree Dillingham took an appeal to the Circuit Court of Appeals.

All the proceedings above stated were filed in and entitled of the cause of *Morgan's Louisiana and Texas Railroad and Steamship Company* v. *Texas Central Railway Company.*

The appeal of Dillingham was heard in the Circuit Court of Appeals by Judge Pardee and Judge Newman, who, for reasons stated in their opinion, delivered by Judge Newman, sustained Dillingham's exceptions to the master's report, reversed the decree of Judge Swayne, and remanded the cause to the Circuit Court "with instructions to overrule and discharge the motions attacking the receiver's accounts." 52 U. S. App. 425, 432. Moran, Gold and McHarg, the purchasing trustees, thereupon applied for and obtained this writ of certiorari. 169 U. S. 737.

The intention of Congress, in enacting that no judge before

whom "a cause or question may have been tried or heard," in a District or Circuit Court, "shall sit on the trial or hearing of such cause or question," in the Circuit Court of Appeals, manifestly was to require that court to be constituted of judges uncommitted and uninfluenced by having expressed or formed an opinion in the court of the first instance. Whatever may be thought of the policy of this enactment, it is not for the judiciary to disregard or to fritter away the positive prohibition of the legislature.

The enactment, alike by its language and by its purpose, is not restricted to the case of a judge's sitting on a direct appeal from his own decree upon a whole cause, or upon a single question. A judge who has sat at the hearing below of a whole cause at any stage thereof is undoubtedly disqualified to sit in the Circuit Court of Appeals at the hearing of the whole cause at the same or at any later stage. And, as "a cause," in its usual and natural meaning, includes all questions that have arisen or may arise in it, there is strong reason for holding that a judge who has once heard the cause, either upon the law or upon the facts, in the court of first instance, is thenceforth disqualified to take part, in the Circuit Court of Appeals, at the hearing and decision of the cause or of any question arising therein. But, however that may be, a judge who has once heard the cause upon its merits in the court of first instance is certainly disqualified from sitting in the Circuit Court of Appeals on the hearing and decision of any question, in the same cause, which involves in any degree matter upon which he had occasion to pass in the lower court.

In the present case, all the decrees and orders of Judge Pardee in the Circuit Court, as well as the decree of Judge Swayne from which the appeal in question was taken, were made in and entitled of the original cause of the bill in equity to foreclose the mortgage of the Texas Central Railway Company. The order appointing Dillingham and Clark receivers upon the filing of the bill, the order allowing Dillingham for his services as receiver the sum of $150 a month from his taking possession and "while he gives his personal attention to the business of the company or until the further order of the

Counsel for Plaintiff in Error.

court," the final decree of foreclosure and sale, and the decrees for delivery of possession to the purchasers, were all made by Judge Pardee; and the appeal, in the hearing and decision of which he took part, from the decree of another judge concerning the compensation of Dillingham as receiver, involved a consideration of the scope and effect of his own order allowing that receiver a certain sum monthly.

The necessary conclusion is that Judge Pardee was incompetent to sit on the appeal in question, and the decree in which he participated was not made by a court constituted as required by law; and therefore this court, without considering whether that decree was or was not erroneous in other respects, orders the

Decree of the Circuit Court of Appeals to be set aside and quashed, and the case remanded to that court to be there heard and determined according to law by a bench of competent judges.